



**NEW YORK STATE DEPARTMENT OF TRANSPORTATION
REQUEST FOR PROPOSALS
RIGHT OF WAY AND REAL ESTATE IT SYSTEM SERVICES FOR NYSDOT
Contract #C037856**

Initial Information for Submittal

A. Please note the following **dates and deadlines:**

RFP Release Date:	June 24, 2019
Pre-Proposal Webinar	July 2, 2019, 9:30 AM – 11:30 PM (EST)
Question Submittal Deadline:	July 8, 2019, 12:00 PM (EST)
Answers/RFP Announcement #1 Due	July 15, 2019
Proposals Due:	August 7, 2019, 12:00 PM (EST)
Proposal Evaluation	August 2019
Demonstrations/Interviews	September 2019
Recommendation & Designation:	September/October 2019
Contract Finalizing:	September/October 2019
Contract Award:	January 2020

- B.** To assist Proposers in preparing proposals in response to this solicitation, a pre-proposal webinar will be held on July 2, 2019 at 9:30 AM EST. A general review of the solicitation will occur and specific questions regarding the solicitation may be answered. Interested Proposers are encouraged to attend. Proposers are encouraged to submit questions no later than 12:00 PM EST on June 28, 2019.

If you plan to remotely attend, please provide the names of attendees to Micheleen Gregware, NYSDOT Contract Management, at (518) 485-8620 or via email at Micheleen.Gregware@dot.ny.gov by 12:00 PM EST on June 28, 2019, if not previously enrolled. Any questions received by 12:00 PM EST on June 28, 2019, may be addressed during this event and an opportunity will be afforded for questions and answers during the conference.

- C.** Complete proposals are to be submitted to the Designated Contact stipulated in Section 1.6.

RFP RESPONSE FORM

RFP RESPONSE FORM: C037856 - RIGHT OF WAY AND REAL ESTATE IT SYSTEM SERVICES FOR NYSDOT

Please review this RFP, complete the following information, and e-mail to the NYSDOT address shown below, by the earliest practical date. This RFP Response form must be submitted along with the two required Procurement Lobbying Law forms (see **Section 5.2.2(d)**) before questions or other communications with the Department regarding this solicitation can be initiated.

_____ WE **DO** INTEND TO SUBMIT A PROPOSAL

_____ WE **DO NOT** INTEND TO SUBMIT A PROPOSAL FOR THE
FOLLOWING REASONS:

Name and Address of Organization (Include Zip Code):

Date: _____

Typed Name and Title: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Please e-mail to: Micheleen.Gregware@dot.ny.gov

CONSULTANT CHECKLIST FOR PROPOSAL SUBMISSION

NEW YORK STATE DEPARTMENT OF TRANSPORTATION REQUEST FOR PROPOSALS RIGHT OF WAY AND REAL ESTATE IT SYSTEM SERVICES FOR NYSDOT Contract #C037856

Part I - Technical and Management Submittal

<input type="checkbox"/>	Nine (9) Printed and bound (in 3-ring binder) hard copies of Part I plus one copy of Part I on Thumb-drive in Adobe PDF format.
<input type="checkbox"/>	Securely sealed and clearly labeled with the consultant's name, address, and telephone number and the title " <i>Right of Way and Real Estate IT System Services for NYSDOT RFP #C037856, Part I — Technical and Management Proposal</i> "
<input type="checkbox"/>	Signed Cover Letter on official business letterhead (2-page limit)
<input type="checkbox"/>	Table of Contents identifying each major section and page numbers
<input type="checkbox"/>	Narrative Description
<input type="checkbox"/>	Approach, Scope of Services and Schedule
<input type="checkbox"/>	Organization and Staffing
<input type="checkbox"/>	Experience
<input type="checkbox"/>	Complete and submit Attachment #15: Key Personnel Resume and References
<input type="checkbox"/>	Complete and submit Attachment #16: Functional Requirements
<input type="checkbox"/>	Complete and submit Attachment #17: Interface Requirements
<input type="checkbox"/>	Complete and submit Attachment #18: Firm Experience
<input type="checkbox"/>	Complete and submit Attachment #19: Project Plan & Staffing
<input type="checkbox"/>	Complete and submit Attachment #20: OITS Technology Services Standards Overview
<input type="checkbox"/>	Complete and submit Attachment #21: Data Conversion
<input type="checkbox"/>	Complete and submit Attachment #22: System Testing & Acceptance
<input type="checkbox"/>	Complete and submit Attachment #23: Support & Maintenance

Part II – Cost and Administrative Submittal

<input type="checkbox"/>	Three (3) Printed and bound hard copies of Part II plus one copy of Part II on Thumb-drive, in Adobe PDF format and MS Excel 2016 compatible format, for Attachment #24 Cost Proposal
<input type="checkbox"/>	Securely sealed and clearly labeled with the title " <i>Right of Way & Real Estate IT Services for NYSDOT RFP #C037856, Part II — Cost and Administrative Proposal</i> "
<input type="checkbox"/>	Required Cost information (complete and submit Attachment #24: Cost Proposal Workbook)
<input type="checkbox"/>	Complete and submit online certification or hard copy of Vendor Responsibility Questionnaire
<input type="checkbox"/>	Complete and submit Attachment #2: Consultant Information and Certifications (sign both Sections II and III)
<input type="checkbox"/>	Complete and submit the Attachment #3: Form AOR Acknowledgement of Receipt
<input type="checkbox"/>	Complete and submit Attachment #4: Procurement Lobbying Law Forms
<input type="checkbox"/>	Complete and Submit Attachment #6: Non-Collusive Bidding Certification

<input type="checkbox"/>	Complete and submit Attachment #7: Vendor Assurance of No Conflict of Interest or Detrimental Effect
<input type="checkbox"/>	Complete and submit: Attachment #11: M/WBE/SDVOB Participation Information Form
<input type="checkbox"/>	Complete and submit (if applicable): Attachment #11a: M/WBE/SDVOB Subconsultant Participation Solicitation Log AND Goal Attainment Explanation Letter
<input type="checkbox"/>	Complete and submit Attachment #13: New York Business Reporting
<input type="checkbox"/>	Complete and submit Attachment #14: Diversity Practices Questionnaire

REQUEST FOR PROPOSALS

NEW YORK STATE DEPARTMENT OF TRANSPORTATION REQUEST FOR PROPOSALS RIGHT OF WAY AND REAL ESTATE IT SYSTEM SERVICES FOR NYSDOT Contract #C037856

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**NEW YORK STATE DEPARTMENT OF TRANSPORTATION
REQUEST FOR PROPOSALS
RIGHT OF WAY AND REAL ESTATE IT SYSTEM SERVICES FOR
NYSDOT
Contract #C037856**

1. INTRODUCTION

1.1 Purpose

The New York State Department of Transportation (hereinafter referred to as “NYSDOT” or the “Department”) is seeking proposals from responsive, responsible, and qualified Consultants (or Team of Consultants) to install and implement a modern Right of Way and Real Estate IT System, via a currently available Commercial Off the Shelf (COTS) product, for the Office of Right of Way (OROW). NYSDOT intends to select and enter into Contract #C037856 with a Consultant that provides the best value to the State based on this solicitation.

1.2 Background

The New York State Department of Transportation (NYSDOT) is responsible for ensuring that those who live, work and travel in New York State have a safe, efficient, balanced and environmentally sound transportation system. The NYSDOT Office of Right of Way supports this by acquiring real estate in a timely manner for transportation purposes and managing or disposing of transportation property on terms beneficial to the People of the State of New York. To support these responsibilities, the OROW currently uses the SESAME software application which is becoming obsolete. A solution must be identified to replace the existing SESAME application. NYSDOT’s OROW maintains information on right of way (ROW) assets including Use and Occupancy Permits and Leases, Signs, Surplus Property, and ROW acquisitions. This is partially accomplished in OROW’s current software environment by manual entry (via SESAME application) of the data collected from various sources, but does not include all available and/or necessary sources nor is the information easily shared among all users.

The product being acquired should be a relational data base capable of “talking” between various modules within the application. The new software also should leverage NYSDOT’s ESRI GIS capabilities or fully incorporate geospatial information across the platform so as to adequately provide map based views of OROW assets or allow NYSDOT staff to spatially locate or query the data.

1.3 Background: Existing NYSDOT Office of Right of Way Processes

The following presents an overview of NYSDOT’s Office of Right of Way processes to be supported by a more modern solution:

Program and Liaison

Program and Liaison coordinates with the Office of Design to manage the Initial Project Proposal (IPP) and acquire an Abstract Request Map (ARM). Using this map, information about the location of the proposed project, and a Site Inspection, expected ROW-related costs are estimated. Consultant services are usually used for Title Searches and the associated Consultant bidding, engagement, payment, and performance reviews are conducted for each project.

Acquisition

Acquisitions is responsible for planning and coordination of activities required for executing the acquisition of the necessary ROW properties to meet capital project and other operational needs. Staff participate in finalizing the properties to be acquired, coordinating Title search requests and Consultants, defining scope for ownership procurements, performing initial property inspections, and work product planning throughout the entire ROW processes. Regional staff interface directly with citizens and businesses where property is to be acquired and ensure that legal certification of owning interest(s) and transfer of property ownership is executed.

The Negotiation Section has the responsibility of providing overall policy and direction for the acquisition activities in the Office of Right of Way, including:

1. The receipt, review and approval of all agreements,
2. All record-keeping and payment processing relating to right-of-way acquisition
3. Deposits and backlogs (unsettled Claims), and
4. The Office's role in the railroad preferential right of acquisition process.

Acquisition: Relocation

When a property to be acquired is occupied, the NYSDOT Relocation unit prepares a Conceptual Relocation plan that forms the foundation for a plan to relocate the occupants. Information for costs to be disbursed to those who are relocated, or to vendors who are providing relocation services, is captured as the ROW project Appraisals and Design packages are completed. The unit identifies properties that may be used to replace the acquired properties. A final Relocation Plan will be completed for a ROW project and submitted with the Appraisals and Acquisition Plans for inclusion in the completed ROW package.

Acquisition: Claims

When property owners reject an offer for the purchase of property, or the agreement is categorized as an Agreement with Advance Payment, the original owners may file a Claim with the NYS Court of Claims to seek additional Just Compensation. The Claims Manager maintains all information about a Claim: Attorneys, Pre-trial activity tracking, Court Award, and Post-Award activities. Activities are closely coordinated with the NYSDOT Office of Legal Affairs and the Real Property Bureau of the NYS Attorneys General Office.

Appraisal

Appraisals are performed for acquisitions of ROW project properties and other purposes (e.g., establishing market value for sales of Surplus properties) where the property value must be determined. The OROW often uses Consultants who are certified to perform appraisals in addition to NYSDOT appraisal staff.

A staff Appraiser and/or Consultant Appraiser may be used to perform the required Appraisal(s). The Appraiser(s) collect the information necessary to complete the Appraisal reports, including sales research information regarding comparable properties. Staff Appraisers perform a Math and Compliance check on submitted Appraisal reports to verify all calculations are correct and all required elements are present. Appraisal unit managers then perform an Appraisal Review; appraisal reviews may be performed at both the Regional and Main Office levels. For any approved Appraisal reports that are completed by Consultants, payments for those services are

coordinated with the NYSDOT Office of Finance. All Consultants are rated for their performance in preparing Appraisal reports.

Property Management

The Property Management unit manages the surplus ROW property, ROW airspace rentals and leases, and signs along Federal and State roadways in NY. Surplus property results primarily from ROW acquisitions where the land is no longer needed for construction or other DOT purposes, or may result from uneconomic remainder properties identified at the time of a capital project ROW acquisition. Airspace rentals and leases result from requests from citizens or businesses for full or partial use of either existing ROW properties or NYS Transportation properties that are not included in the existing captured ROW properties. The Sign program permits and monitors signs used for advertising, informational, and directional purposes across New York state.

Surplus property may be identified during the ROW acquisition process or at the end of the capital project. Three types of dispositions must be managed: requests for, transfers to, and surplus sales. If the property has never been captured, it must be recorded with map attachments. Sales are variations of disposition involving responses to citizen and business requests, coordination with another State or Local entity, and offers for sale. Dispositions are reviewed and approved by NYSDOT executive management, NYS Office of the State Comptroller (OSC), and FHWA.

Surplus properties may be retained beyond the scope of the original purposes behind the acquisition. These properties are managed and may be used to generate revenue in the form of Rentals and Leases. Use and Occupancy rights may be requested and rented/leased unless they are disposed or needed for other transportation purposes. Agreements and other legal documents are generated, reviewed, approved, and implemented. Initial payments are managed and coordinated with NYSDOT Finance and OSC and this unit assists Finance with arrearage resolutions.

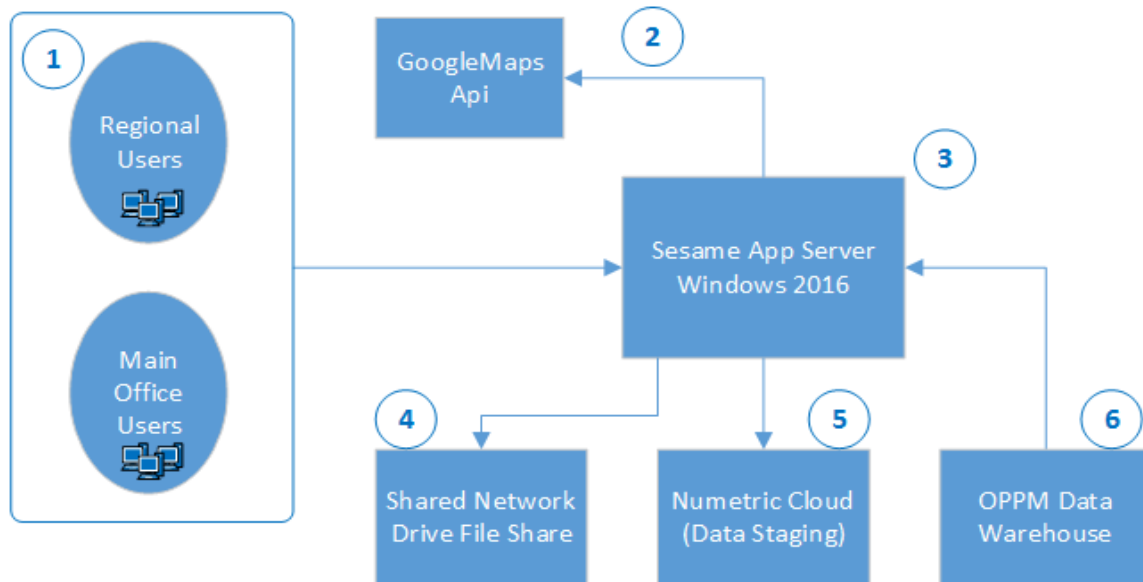
The NYSDOT Sign Control Unit, under the Federal Highway Beautification Act, controls the placement of outdoor advertising signs and devices along the Interstate and Federal-aid primary systems. Advertising signs, including variable messaging signs, are required to be permitted and conform to standards. Citizens and businesses request sign permits for advertising purposes and must provide information about each permitted sign. There is also a Directional Sign Program and Tourist-Oriented Directional Sign Program for motorist information signs within NYSDOT right-of-way. The unit generates permit paperwork that the requestor must submit for review/approval along with supporting documentation and final, approved permit agreements. Initial payments are managed and coordinated with NYSDOT Finance and this unit assists Finance with arrearage resolutions. A regional inventory must be performed each year to identify unregistered signs and verify permitted signs.

Administration

The Administrative Unit facilitates and maintains the Regional Office of Right of Way's files, maps, records, staffing requirements, and office operational expenditures.

1.4 Background: Current SESAME System Description

NYSDOT's current Sesame application is described below. The SESEME system will be replaced by the selected solution resulting from this RFP. NYSDOT requires that the current data be retained forever, be searchable and reportable.



1. NYS DOT Regional (01-11) and Main Office users connect to the Sesame application using a thick client executable.
2. Based on Lat/Lon coordinates stored in the Sesame data, users can view specific locations by clicking on a link that opens the location in a Google Maps browser instance on the client machines.
3. The Sesame application resides on a Windows 2016 application server.
4. Shared document and image files are stored on a shared network file server; there is limited ability to retrieve some documents from within the Sesame application.
5. The Numetric Summit tool resides on a RedRamp-certified cloud instance where data cleansing for the legacy Sesame data is being performed.
6. The Sesame application has the capability to initiate Crystal Reports to query Capital project data from the OPPM data warehouse.

The following table provides additional information describing the current SESAME system. Additional background can be found in **Attachment 25** Use Cases.

Entity/System	Subsystem	Data Storage	Entity Explanation/Purpose of System
Sesame	CBASIC	Non-Relational	Sesame is New York State Department of Transportation's Statewide Office of Right of Way Application. The mission of the Office of Right of Way is to acquire real estate in a timely manner for transportation purposes and to manage or dispose of transportation property on terms beneficial to the people of the state of New York. Sesame runs on NYSDOT Windows application server, and was developed using C Basic. It requires Client software installation (Thick Client) at the user's desktop and communication is through a Client-Server standard TCP Connection. There are multiple database files used to store the data. A limited number of documents stored on the shared network file storage drive are accessible through the Sesame interface; most users access to these files by navigating to the documents directly using Windows Explorer. The hardware components are installed and located at CNSE Datacenter. Sesame data is stored in multiple proprietary database files; the data format is not relational. Internal users are granted access at varying levels depending on their responsibilities to one or more of these databases. The data is not relational and is not conformed programmatically, necessitating an interim solution to stage data for migration to a new ROW application.
Summit	N/A	Relational	The Numeric Summit tool is currently connected to the Sesame application server. Data is in the process of being extracted from Sesame data files and staged in a cloud-based Oracle instance. Data extract reporting is made available to Sesame users engaged in data cleansing efforts for review. As this effort progresses, users are correcting and conforming data within Sesame. The extract will be performed periodically to check the progress of the cleansing efforts. In addition, business rules for the Summit tool extract process are being built to migrate cleansed data into a relational format for migration to a new solution.
PSS/OPPM Data Warehouse	N/A	Relational	The PSS data warehouse contains data extracted from the Project Planning application on a nightly basis. This information is available to multiple NYS DOT applications, containing data about the Capital Project program such as Project Names, Descriptions, Schedules, etc. Users currently may view this information by clicking a button from one or two screens within the Sesame application. The capability to generate a report constructed using the Crystal Reports application sourced from this data store is integrated with Sesame to a limited extent.

1.5 Minimum RFP Responsiveness

Any Firm that does not provide **all** of the following **by the RFP deadline** will be determined to be non-responsive and will be removed from further consideration (prior to the technical evaluation of proposals):

1. Part I of the Proposal – Technical and Management submission
2. Part II of the Proposal – Cost and Administrative submission
3. Completion of all applicable attachments:

Attachment 24	<i>COST SUBMISSION - Lump Sum</i>
Attachment 2	Consultant Information and Certification Form
Attachment 3	Form AOR Acknowledgement of Receipt
Attachment 4	Procurement Lobbying Law Forms
Attachment 6	Non-Collusive Bidding Certification
Attachment 7	Vendor Assurance of No Conflict of Interest or Detrimental Effect
Attachment 11	M/WBE/SDVOB Participation Information Form
Attachment 11a	M/WBE/SDVOB Subconsultant Participation Solicitation Log
Attachment 13	New York Business Reporting
Attachment 14	Diversity Practices Questionnaire
Attachment 15	Key Personnel Resume and References
Attachment 16	Functional Requirements
Attachment 17	Interface Requirements
Attachment 18	Firm Experience
Attachment 19	Project Plan & Staffing
Attachment 20	OITS Technology Services & Standards Overview
Attachment 21	Data Conversion
Attachment 22	System Testing & Acceptance
Attachment 23	Support & Maintenance

1.6 Designated Contact

Potential responders are advised that under New York State Finance Law Section 139-j, communication on procurements can be made only to designated contact persons. The Department's Designated Contact for this procurement is:

Primary Contact:
Ms. Micheleen Gregware
New York State Department of Transportation
Contract Management Bureau
50 Wolf Road, 6th Floor
Albany, NY 12232, USA
E-mail: Micheleen.Gregware@dot.ny.gov

The above-named person, as the Department's Designated Contact for this procurement, shall be the Department's only points of contact and source of information for this procurement.

1.7 RFP Modifications

If necessary, NYSDOT will issue Modifications to modify conditions or requirements of this RFP. Proposers are advised to visit the NYSDOT web site (<https://www.dot.ny.gov/portal/page/portal/doing-business/opportunities/consult-opportunities>) regularly to check for Modifications. The final Modification will be posted on NYSDOT's web site not later than seven (7) calendar days prior to the Proposal due date. If an additional Modification is required within seven (7) days of the Proposal due date, the Proposal due date shall be revised such that there will be seven (7) days from the final Modification to the Proposal due date.

2 CIVIL RIGHTS REQUIREMENTS

2.1 Disadvantaged Business Enterprise Participation – *Not Applicable*

2.2 Minority and Women-owned Business Enterprise Participation

While not indicative of a proposer's individual merit (technical excellence, proposer's ability, experience, etc.), the NYSDOT encourages the participation of certified Minority Business Enterprises and Women-Owned Business Enterprises in this solicitation. The level of Minority Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE) participation will be relevant to the process of selecting proposals that will best achieve the overall goals of the Department. A directory of certified MBEs and certified WBEs is available from Empire State Development's searchable database website: <http://www.esd.ny.gov/MWBE.html>

New York State has established a **MBE goal of 6% and WBE participation goal of 13%** for this solicitation. Only meaningful participation by either a prime consultant **who is certified as** an M/WBE or inclusion of subconsultant(s) **who is/are certified** as an M/WBE counts toward the M/WBE participation goal. Meaningful participation is defined as providing commercially useful functions or services. These services should:

- Result in a product or service distinguishable from the Prime Consultant's product or service or be a part of the services provided by the Prime Consultant,
- Be for scope of service elements which can be and are completely performed, supervised and managed by the MBE and/or WBE consultant, and/or
- Perform significant tasks which can be considered commercially marketable.

Interested proposers should verify their attainment of the above established M/WBE participation goal by completing **Attachment 11 - M/WBE/SDVOB Participation Information**. For participation to count towards the M/WBE goal set for this solicitation, the offered MBE and/or WBE participating firm must be currently certified by Empire State Development. If the proposal does not meet or exceed the 19% percent M/WBE participation goal, the firm must provide evidence of a good faith effort by completing **Attachment 11a - M/WBE/SDVOB Subconsultant Participation Solicitation Log**.

Additionally, if the firm does not meet the specified goal, the firm must include in its submission a **Goal Attainment Explanation Letter** explaining why the firm was unable to meet the applicable M/WBE (in full or if partially), which serves to substantiate the firm's good faith effort. The letter should include sufficient justification as to why the goal was not met or was met partially and should at a minimum address the following factors: the potential firm's method of accomplishing the work, the subcontracting opportunities associated with the proposed approach and scope of services, and the availability of certified firms for the work to be performed by either a prime consultant or via subcontract.

The above forms and letter must be included in Part II: Cost and Administrative submission. Firms are advised to refer to Section 6.2 for the procedure the Department will follow in evaluating a firm's proposed MBE and WBE participation.

2.3 Service-Disabled Veteran-Owned Business Program (SDVOB)

New York State has established participation goal of 6% for this solicitation. Only meaningful participation by either a prime contractor who is certified as an SDVOB or inclusion of subcontractor(s) who is/are certified as an SDVOB counts toward the SDVOB participation goal. Meaningful participation is defined as providing commercially useful functions or services.

These services should:

- Result in a product or service distinguishable from the Prime Contractor's product or service or be a part of the services provided by the Prime Contractor,
- Be for scope of service elements which can be and are completely performed, supervised and managed by the SDVOB Contractor, and/or
- Perform significant tasks which can be considered commercially marketable.

A listing of current certified SVDObS an out how a firm can become certified as a SDVOB, please visit the New York State Office of General Services: <http://ogs.ny.gov/core/sdvoba.asp>.

Interested proposers should verify their attainment of the above established SDVOB participation goal by completing **Attachment 11 - M/WBE/SDVOB Participation Information Form**. For participation to count towards the SDVOB goal set for this solicitation, the offered SDVOB participating firm must be currently certified by Empire State Development. If the proposal does not meet or exceed the 6% percent SDVOB participation goal, the firm must provide evidence of a good faith effort by completing **Attachment 11a - M/WBE/SDVOB Subcontractor Participation Solicitation Log**.

Additionally, if the firm does not meet the specified goal, the firm must include in its submission a Goal Attainment Explanation Letter explaining why the firm was unable to meet the applicable SDVOB (in full or if partially), which serves to substantiate the firm's good faith effort. The letter should include sufficient justification as to why the goal was not met or was met partially and should at a minimum address the following factors: the potential firm's method of accomplishing the work, the subcontracting opportunities associated with the proposed approach and scope of services, and the availability of certified firms for the work to be performed by either a prime contractor or via subcontract.

The above forms and letter must be included in Part II: Cost and Administrative submittal. Firms are advised to refer to Section 6.2 for the procedure the Department will follow in evaluating a firm's proposed SDVOB participation.

2.4 Diversity Practices

NYSDOT evaluates the diversity practices of primes to ensure that certified minority and women-owned businesses are given the opportunity for maximum participation in state contracts. Diversity practices are a legal requirement and may include past, present or future actions and policies which show interaction in developing M/WBE firms. Interested proposers should complete **Attachment 14 - Diversity Practices Questionnaire**.

2.5 Title VI Assurance

The New York State Department of Transportation (NYSDOT), in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation and Title 23 Code of Federal Regulations, Part 200, Title VI Program and Related Statutes, as amended, issued pursuant to such Act, hereby notifies all who respond to a written NYSDOT solicitation, request for proposal or invitation for bid that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, disability/handicap and income status in consideration for an award.

2.6 Equal Employment Opportunity – Pay Equity

In Accordance with New York State Executive Order 162, issued on January 9, 2017, the Operator shall provide workforce utilization reports in accordance with RFP **Attachment 1 - Draft Contract**.

3 PROJECT AND CONTRACT OBJECTIVES

3.1 Project Objectives

NYSDOT's Office of Right of Way, in conjunction with the NYS Office of Information Technology Services, is seeking a comprehensive COTS solution to replace the legacy Sesame system for the appraisal, acquisition, and management of property acquired for public projects.

The new system shall:

1. Manage ROW acquisition, relocation, appraisal, offer, and purchase settlement requirements
2. Manage the disposition and use of NYSDOT ROW properties
3. Manage permitting for highway advertising and informational signs
4. Manage the processing of payments and revenue associated with ROW properties and highway signs
5. Support all existing NYSDOT OROW processes (see RFP Section 1.3)
6. Consultant Contract Management

NYSDOT desires a solution that has been implemented on a statewide basis. NYSDOT is interested in a solution that includes options for vendor support throughout all regions of the state. Support may be delivered by contractor employees or partner relationships with regional or local service providers. Also, virtual remote support will be considered. Both the primary contractor and any subcontractors must have the necessary training and corresponding vendor certification to adequately support the solution.

Successful implementation of an envisioned solution will not only support NYSDOT goals and departmental missions, but will seek to achieve the following business objectives:

1. Eliminate the use of obsolete office applications and tools.
2. Integrate Capital Project information with associated OROW projects.
3. Enable the use of NYS spatial information for OROW activities.
4. Eliminate wasteful, redundant data entry.
5. Increase efficiencies and security in producing and storing OROW forms and other images/documents.
6. Provide access to Consultants to enter and submit their work product into the system.
7. Enable support for citizens to request and manage their Use and Occupancy leases/Sign permits on-line.
8. Support an interface to enable the capture of information gathered in the field on mobile devices.
9. Implement a web-based system to allow users to submit and view information.
10. Standardize the OROW processes through minimal workflows enforced by business rules as customized by NYSDOT.
11. Reduce analysis time with additional data available in a centralized system.
12. Centralize reporting and monitoring abilities while maintaining regional monitoring and reporting capabilities.

13. Improve the ability to respond quickly and accurately to NYSDOT Management.
14. Eliminate the disparate data silos and associated data integrity issues between existing legacy systems.
15. Modernize antiquated systems with newer technologies to allow for future-looking web-based access and integration with mobile devices using a mobile application. The web application should be fully mobile-responsive. (*Reference Attachment 27 - ITS Experience Design Approach*)
16. Enterprise licensing that allows all users to freely access the system.

3.2 Contract Objectives

1. Consulting Arrangements: To hire one responsive, responsible, experienced, knowledgeable and qualified Prime Consultant under Contract #C037856. NYSDOT will accept a team of consultants wherein the contract will be with the Prime Consultant. Sub-consulting and teaming arrangements are encouraged. Joint ventures are NOT allowed.
2. For all offerors to accept the RFP's Draft Contract Terms and Conditions (**Attachment 1**), as is, after having been given ample opportunity to review and ask questions regarding the RFP's Draft Contract's terms and conditions prior to the submission of proposals.
3. M/WBE Participation: Via this solicitation, the selected Consultant shall meet or exceed the M/WBE participation goals established for the resulting contract over its full term; to provide a utilization opportunity for certified M/WBE firms to participate in the awarded contract.
4. Contract Term: The base term of the contract shall be five (5) years upon final approval by the NYS Office of the State Comptroller.
5. Method of Payment: Payment will be made based on the acceptance of completed deliverables as identified in RFP Section 4, Scope of Services and upon receipt, by NYSDOT, of complete and accurate billing invoices.
6. Best Value Selection: To select a responsive and responsible Consultant using NYSDOT's Best Value method based on a thorough examination of proposals submitted in response to the RFP (See SFL Sec. 163 (1)(i)).
7. Fair and Equitable treatment of all firms participating in this competitive consultant selection process.

3.2.1 Complexity

NYSDOT's Right of Way and Real Estate IT System Services will be a mission critical application that will be used daily by many internal and external entities.

3.2.2 Ownership of Data Sources

All data provided to the Consultant for development of NYSDOT's Right of Way and Real Estate IT System shall remain the property of NYSDOT (or other Project Stakeholders), and the Consultant will be prohibited from re-distributing the data, for any purpose, to any organization

without the prior written approval of NYSDOT. All reports or data generated by the System shall be NYSDOT property.

3.3 Acronyms and Definitions

Abstract Request Map (ARM): A drawing that represents multiple proposed properties that may need to be acquired as part of a right of way acquisition project.

AC 340: State of New York standard Contract Encumbrance Request used to authorize payments to Claimants, Vendors, and Consultants.

Acquisition Map: A drawing that represents one or more properties that must be acquired as part of a right of way acquisition project.

Administrative Settlement: An administrative settlement is any settlement made or authorized to be made by the responsible acquiring official, which is in excess of the agencies approved value.

Agreement of Adjustment: This type of agreement settles the acquisition, plus applicable interest, with the right to file a Claim in the NYS Court of Claims waived.

Agreement (Advanced Payment): This type of agreement allows the Claimant to collect the offered amount plus interest and provides the Claimant to negotiate for additional compensation if warranted and justified. If the Claimant does not agree to the acquisition following negotiation, they may choose to file a Claim in the NYS Court of Claims for up to three years following the vesting of the property.

Airspace Occupant: Any person, business, farm, religious, not-for-profit organization, quasi-governmental or governmental agency occupying space located above, at, or below the highway's established grade line which is within the approved right of way.

Approaches to Valuation: Supporting justification for valuations presented in Appraisal Reports: Sales Comparison, Income, or Cost

Appropriation Map: An acquisition map which, upon its filing in the Office of the Clerk for the county in which the property is situated, vests title in the People of the State of New York.

Backlog: Unsettled owner claims to be adjudicated by the NYS Court of Claims. Also refers to any unpaid Claims remaining past one year beyond the Letting Date of the associated Capital Project.

CEVMS: Commercial Electronic Variable Message Sign

Claimant: Any individual, business, or municipality that is eligible for compensation due to their ownership interest in properties that are acquired by NYS DOT.

CNSE: Colleges of Nanoscale, Science and Engineering; NYS' Primary Data Center which hosts applications and data for all NYS Agencies.

Contract: Agreements to obtain consultant appraisal services from \$15,001 to \$50,000; require public bidding and advertisement in the State's Contract Reporter

Conveyance Map ("C-map"): A map depicting and describing the real property interest conveyed by the Department. The "C" map should include reference as to how and when the Department acquired its interest.

COTS: Commercial off-the-shelf; general reference to products available in the marketplace which require minimal configuration and/or customization for implementation and use.

CWOFP: Closed Without Further Payment

CWOP: Closed Without Payment

Damages: Monetary compensation paid to owners of property interest(s) in the execution of property interest takes relating to Federal and State Eminent Domain Law.

DBE/MWBE: Disadvantaged Business Enterprise, Minority and Women-Owned Business Enterprise; receive procurement preferences when doing business with NYS.

D#: Contract number used by NYSDOT to advertise/let Capital Project work that will be performed by contractors.

DDR: Draft Design Report - initial report detailing alternatives for the design.

Directional Sign Program: Manages the permitting for Tourist-Oriented Directional and Logo signs located in the NYS ROW along state roads and highways.

DOL: Department of Law

EDPL 701: NYS Eminent Domain Public Law §701 supports reimbursement for actual and necessary costs, disbursements and expenses, including reasonable attorney, appraiser and engineer fees actually incurred, when the awarded value of a Claim is substantially higher than the value offered for the property taken.

Esri ArcGIS: New York State's GIS platform which provides capability to share and discover geographic information, create and manage state geographic assets, visualize and analyze geospatial information, and collaborate geographic data in real-time.

FDR: Final Design Report - approved Design for Project execution; this report is required before any outreach to current occupants regarding relocation is made.

Fee Interest: Owner interest having complete control rights to a parcel of property

Fee Proposal: The solicited submission for bids to supply Appraisal Report(s) for OROW activities.

FHWA: Federal Highway Administration

FIN 400: State of New York Standard Voucher used to report receipt of monies for sales and fees to Agency Finance groups.

FOIL: New York State's "Freedom of Information Law"

FPN: Federal Project Number assigned to Federally funded projects

GIS: Geographic Information System

IPP: Initial Project Proposal

IT: Information Technology

ITS: The New York State Office of Information Technology Services

LOGO Sign Structures: Display specific business services; found at highway exits; multiple LOGOs may appear per sign and each LOGO must be permitted. Specific Service signs,

intended for rural areas and are not available in urbanized areas, including Long Island, New York City and other large cities. These signs provide directional information to the traveling public along Interstate Highways and Limited-Access Primary Highways covering specific services. These services are gas, food, lodging, camping, and attractions. Attraction signing is permitted in some urban areas, including Long Island.

LRH: Last Resort Housing costs represent payments made above normal reimbursement costs due to the inability to find exact replacement properties which results in harm to Relocates.

Map Closing: Refers to a final payment (or non-payment) status on a claim post a statute of limitations period.

Map/Parcel: A Map is a graphical depiction of one or more Parcels of property having the same ownership in property interests.

Meaningful Contact: Communications between NYS DOT ROW staff and Claimants and/or their representative(s).

NEPA: National Environmental Policy Act.

NYS Data Center: State-wide network headquarters for applications and databases used throughout NYS Agencies and organizations; located in the CNSE building on the SUNYA campus in Albany, NY.

NYSDOT: New York State Department of Transportation

NYSDTF: New York State Department of Tax and Finance

NYS AG or OAG: New York State Office of Attorney General

NYS OGS: New York State Office of General Services

NYS OSC: New York State Office of the State Comptroller

OA: Outdoor Advertising signs controlled under the Federal Highway Beautification Act of 1965

Open NY: NYS Open data site where government organizations may share their data with the public; <https://data.ny.gov>

OROW: Office of Right of Way

Permanent Easement (PE): a limited, specific use of real property and of indefinite duration

PIN: Unique Project Identification Number

Preferential Rights: Rights held by NYSDOT over Rail properties; Railroads are required to gain NYSDOT agreement before disposing of these properties to other parties.

Property Executive Review Group (PERG): DOT governance group; establishes criteria for decision-making on the sale or lease of property by the Department of Transportation, adopts rules and procedures consistent with governing the Group's operations, and makes such rules and criteria available to the public.

Property Use: Current use of property - Vacant (Residential, Commercial, Agricultural, Industrial, or unidentified) or Improved (Residential, Commercial, Agricultural, or Industrial)

Protected, Personal, or Sensitive Information (PPSI): Any information where unauthorized access, disclosure, modification, destruction or disruption of access to or use of such information could severely impact the SE, its critical functions, its employees, its customers, third parties, or citizens of New York.

PS&E: Plans, Specifications, & Estimates

PSS/OPPM: NYS Project Planning applications used by the NYS DOT Project Management group to capture information about potential and executed projects. Project information is extracted from these applications and stored in a data warehouse for access by multiple applications across the NYS DOT.

Reference Marker: NYS DOT permanent designations for points along NYS Roadways.

Regional Office/Main Office: Regional offices contain NYSDOT staff located throughout the State performing distributed functions; the Main Office contain NYSDOT staff who perform centralized functions.

Report of Physical Inspection (RPI): Outcome of physical inspection of property to be acquired; includes: property description, occupants, water supply, water waste disposal, and property components.

ROW: Right of Way

RP-5217: NYS DTF Real Property Transfer Report/Sales Reporting required for all NYS Real Property Transfers/Sales

Section 18: Section 18 of the New York Transportation Law, ("Acquisition of Abandoned Railroad Transportation Property") is a relatively complex procedure by which the State and its local instrumentalities have right of first refusal at acquiring certain abandoned railroad properties before such property is disposed of in some other fashion.

Sesame Application: The OROW software application used to capture information in support of the Office's activities.

Sequester Funding: An activity performed by the NYSDOT Finance unit and is outside the scope of the OROW activities.

SFS: The New York State's State Financial System

SGPIPA: Smart Growth Public Infrastructure Policy Act - ensures all public infrastructure projects undergo a consistency evaluation and attestation.

SH: State Highway

T Contract: Agreements to obtain Consultant Services from \$5,001 to \$15,000; competitive proposals must be solicited from five Consultants

TA #: Term Assignment number assigned to a consultant for specific Appraisal services delivery

Take Line: The perimeter boundary of ROW properties to be acquired.

Take Type: The type of ownership interest in properties needed to support a project; includes: Fee Interest, Permanent Easement, Temporary Easement, and Temporary Occupancy.

Taking Line Review meeting: Meetings held with involve the OROW, the designer, the regional surveyor, and others as needed. At the meeting, the actual taking lines on the Abstract Map parcels are determined and the type of interest that is needed identified (Totality, Fee, TE, PE).

Temporary Easement (TE): A limited, specific use of real property for a defined time period.

Temporary Occupancy (TO): Temporary Occupancy

Temporary Reference Number (TRN): A unique temporary reference number assigned by Project Engineers identifying property parcels on ARMs/Acquisition Maps; this number is used at DOT and at the DOL AG's Office to track the work that is done regarding Title Searches/Certifications.

Title Search: Performed typically by Consultants or AG Office staff to establish current ownership of properties to be acquired for a project; may be Simple Title Search - current owner (<10K), 20 Years Title Search - ownership interests covering the last 20 years (between \$10k and \$40k), Abstract Title Search - full recorded property history of ownership (>\$40k).

Tourist-Oriented Directional ("TOD") Sign: Intended for rural areas and not available in urbanized areas, including Long Island, New York City and other large cities. Provides tourist-oriented directional information to the traveling public to public places such as natural phenomena, historic, cultural, scientific, educational and religious sites, places for camping, lodging, eating and vehicle service and repair, as well as signs advertising services, activities, arts, crafts or products that are generally and commonly accepted to be of specific interest to the traveling public for the particular geographic region and which do not relate to nationally-advertised products, trade-marks or brand names. These signs are located within the State right of way and require a permit.

TP-584: NYS DTF Combined Real Estate Transfer Tax Return required for all NYS Real Property transfers

Transfer Map (T-Map): Map used to transfer the Department's jurisdiction over a parcel to another State agency or State authority.

Use and Occupancy Leases (U&O): Individuals and businesses may, on request, lease OROW properties for direct occupancy of the property or for private use.

USPAP: Uniform Standards of Professional Appraisals Practice - standards authorized by Congress as the minimal appraisal practices required to protect the public and to promote the public trust.

W#: The ROW-assigned number to correspond with an individual Claim Map(s). One W# is equivalent to One Agreement/One Property Claim. This number is also used as a unique identifier to communicate with NYSDOT Finance and The NYS Comptroller's Office.

3.4 Contract Terms and Rate Adjustments

The Department estimates that the work for the successful consultant will commence on November 1, 2019. The base term or duration for the contract is five (5) years upon final approval by the NYS Office of the State Comptroller.

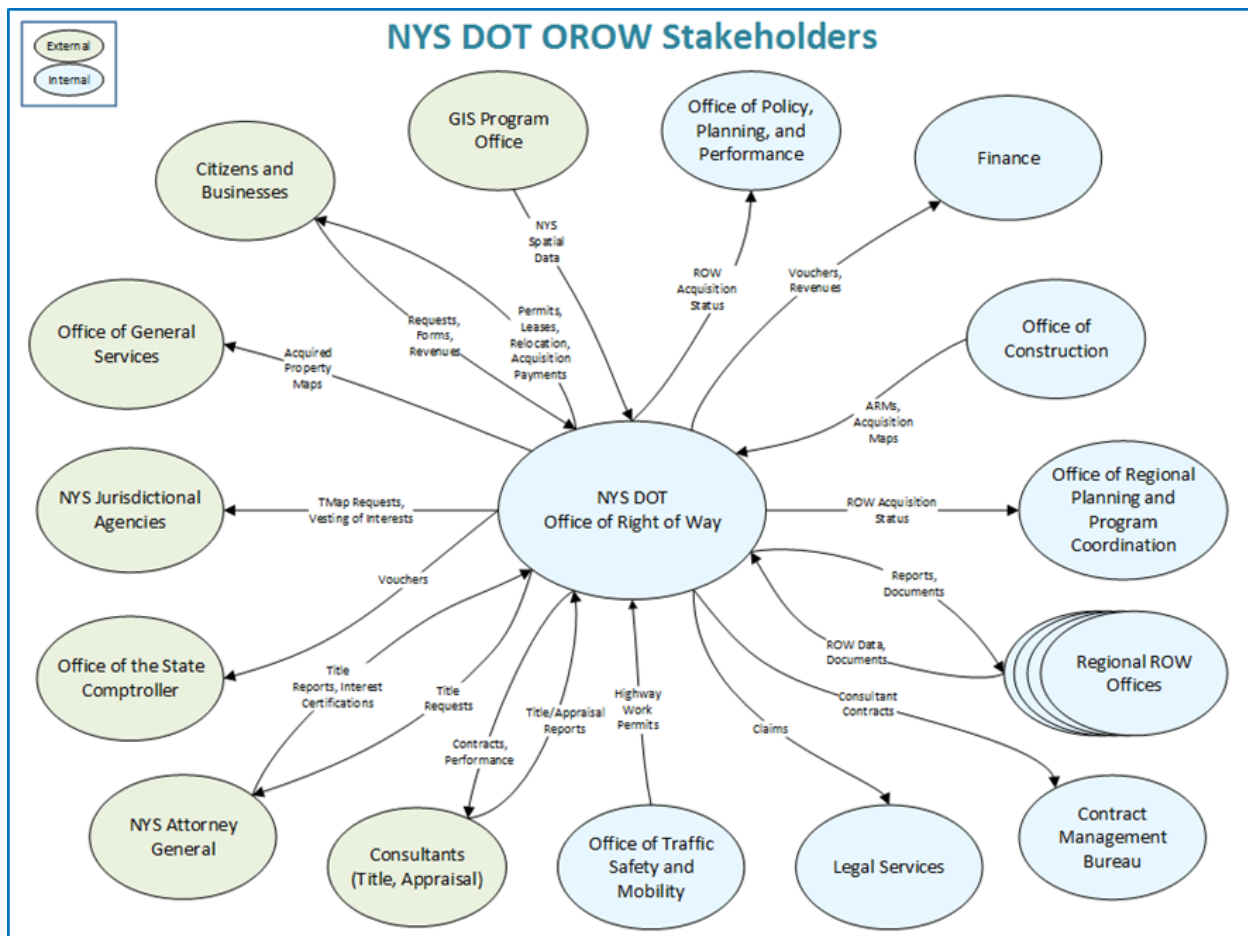
4 SCOPE OF SERVICES

4.1 Future State OROW System Context Diagrams

This section provides a high-level description of what NYSDOT envisions a possible ROW system (or business model) depicting user and system interfaces to satisfy ROW business goals.

Figure 1 presents required Right of Way and Real Estate IT System stakeholders - those who are expected either to interface directly with a future NYSDOT ROW/Real Estate IT System or those who will share information with the System.

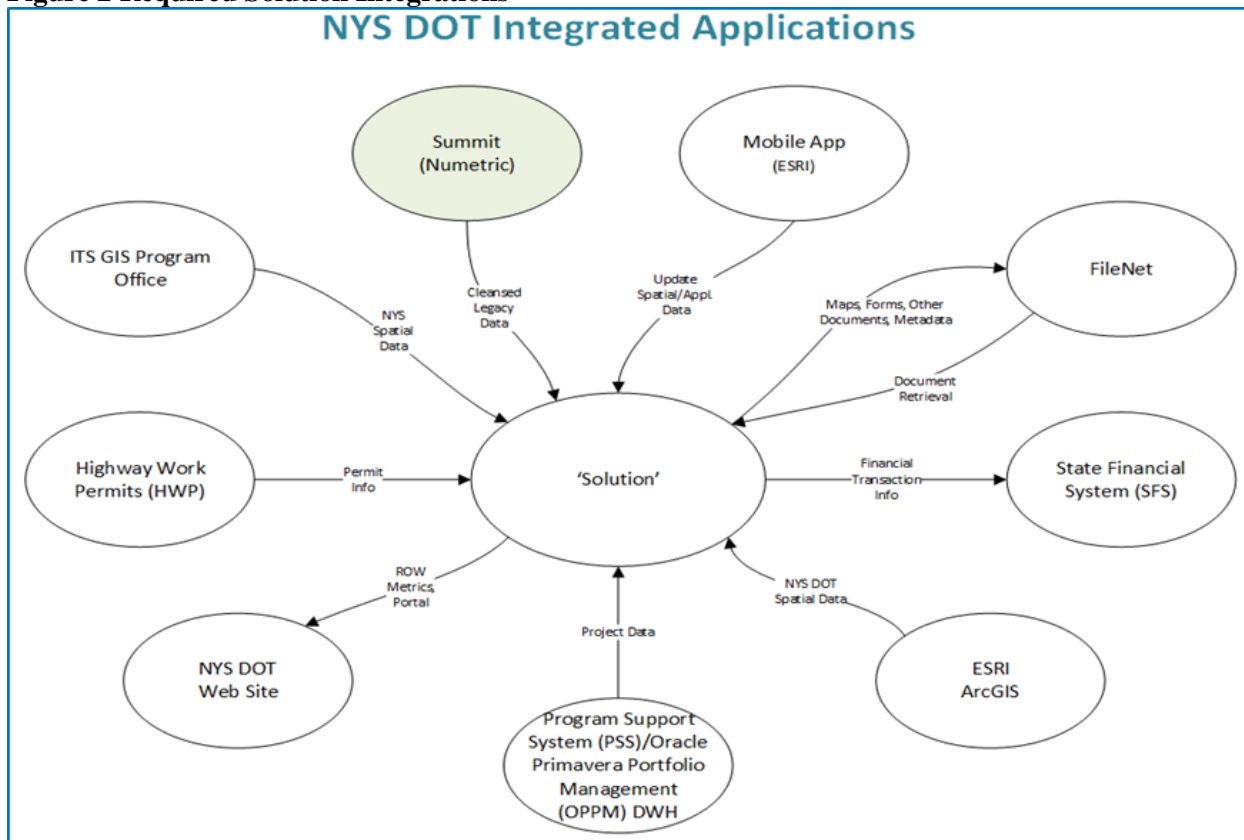
Figure 1 Required ROW/RE IT System Stakeholders



The following context diagram identifies the planned interfaces to and from the proposed future NYSDOT ROW/Real Estate Management IT System are shown in **Figure 2**. A high-level functional diagram envisions the future state of the OROW System. **Figure 2** presents high-level functional requirements of the envisioned NYSDOT ROW/Real Estate IT System. It is important to note that as technologies evolve, other integrations with other data sources and applications are expected to be supported by the System. More detailed descriptions of the required entities and systems in which the ROW System shall interface with, as well as how, are contained in **Attachment 17 - Interface Requirements**. Proposers will find this

diagram and accompanying descriptions of the entities and systems in which the ROW and Real Estate IT System will need to interface with in **Attachment 17**.

Figure 2 Required Solution Integrations



4.2 General Requirements

Through this procurement, NYSDOT seeks to acquire an industry leading **Right of Way and Real Estate IT System** solution with Consultant support. The successful Consultant shall have an organization capable of supporting this System throughout the term of the Contract. The State's intent is to make use of the standard functionality within a COTS software solution to the maximum degree possible.

The proposed **Right of Way and Real Estate IT System** solution shall fit into the overall infrastructure and architecture requirements of NYS IT systems defined in this RFP (see **Attachment 20**) deployed at New York State's Data Center, and provide a scalable design to allow for future growth. Each proposer shall present a succinct description regarding how each requirement listed in **Attachment 20** shall be met or acceptably substituted.

Under the resulting contract, the selected Consultant shall provide the following services/functions, as applicable:

1. Project Planning
2. Project Management, Execution and Control

3. MWBE & SDVOB Participation Management Plan
4. Application Strategy, Architecture and Planning
5. Detailed Requirements Definition
6. System Design Specification
7. System Construction: Configuration/ Programming/ Development/ Integration/ Data Migration
8. System Testing and Acceptance Test Planning
9. Product Implementation and Deployment
10. Communications
11. Change Management
12. Training and Knowledge Transfer
13. Post Implementation Warranty, Maintenance and Support

4.3 NYSDOT / ITS Technical Environments

The NYSDOT technical environment is managed by the Office of Information Technology Services (ITS) at the NYS Data Center, Colleges of Nanoscale Science and Engineering (CNSE) building located in Albany. The computer hardware and databases used in support of the Right of Way/Real Estate IT System shall be configured to support multiple processing environments that are logically separated by Stealth COIs (Community of Interest), and in some cases, physically, separated. The logical separation is required for security as the NYS Data Center is a shared services environment, and multiple tiers are required to prevent ongoing development and testing activities from conflicting with one another, or with the production system, and allows the controlled implementation of new functionality and software patches. The NYSDOT/ITS technical environment consists of four logical and physical tiers: Development, Test, Quality Assurance (Staging), and Production.

4.4 NYSDOT / ITS Technical Environment Access Rules

Applications that require configuration and/or customization shall be installed, customized, and tested in the Development Tier. The selected Consultant shall develop and provide fully tested installation and data-migration scripts (Release Packages) to move applications and data to the Test, Quality Assurance, and Production Tiers.

Applications that do not require configuration and/or customization can be installed in the Test Tier. The selected Consultant shall develop fully tested installation and data migration scripts (Release Packages) to move applications and data to the Quality Assurance and Production Tiers.

4.5 Installation (Release) Packages

NYSDOT / ITS employs the Information Technology Infrastructure Library (ITIL) framework using ServiceNow as the tool. NYSDOT/ITS requires generic, repeatable installation packages or scripts (Release Packages) which contain all necessary application, data-migration scripts that

can be run with little or no modification on any web, application server or database instance. The migration of Release Packages through the tiers will be managed via the Transportation Portfolio DOT Release and Deployment process (as described in **Attachment 26 – ITS Release & Deployment Management Process**) and procedures established in the ServiceNow module. Neither developers nor vendors are granted permission or access to tiers other than Development.

4.6 Functional Requirements

The proposed solution shall be highly configurable (i.e., can be adapted to meet changing business needs with minimal custom changes to the underlying software programming code) so that NYSDOT staff can create or configure System forms, workflows, business processes, business rules, and reports without impacting the underlying software code. The System shall enable the replacement of current obsolete systems and shall provide functionality per **Attachment 16**.

4.7 Project and Technical Requirements

The proposed solution shall employ proven hardware and software technology via an appropriately experienced Consultant providing software and services which meet all RFP objectives and requirements, meet all data and system security requirements, meets defined performance standards, is supportable for the term of resulting Contract #C037856, and is cost effective to procure, maintain and operate. The proposed solution shall address the following areas:

- NYS Standards
- System Interfaces
- System Administration
- System Security
- Storage Archival and Retrieval
- System Performance
- Database Requirements
- GIS

The proposed solution shall use the supported enterprise shared service platforms and components as defined in **Attachment 20 – OITS Technology Services and Standards Overview**. ITS Enterprise Technologies are available for the selected Consultant to build and configure a solution that meets business requirements defined by the New York State customer agency (e.g., NYSDOT). Using NYS ITS Enterprise shared services and components for on premise solutions is the preferred architecture, however, other products may be proposed based on potential integration advantages and/or alignment with the ITS Enterprise strategic direction and with approval by the New York State Chief Technology Officer.

All builds and configurations shall comply with NYS Information Technology Policies, Standards, and Best Practice Guidelines. These guidelines can be found on the ITS website at <https://its.ny.gov/tables/technologypolicyindex>.

4.8 NYSDOT Responsibilities

NYSDOT will appoint a Project Manager who will serve as the single point of contact for the Consultant. The NYSDOT Project manager will lead and coordinate the effort for NYSDOT and

manage the Consultant's service delivery to NYSDOT. The NYSDOT Project Manager will be solely responsible for decisions related to the acceptance and approval of all deliverables provided by the Consultant and for ensuring required NYSDOT resources are available when called for in the Project Plan. NYSDOT will attempt to make its resources available in a timely manner, which is subject to changing priorities.

The New York State Office of Information Technology Services (ITS) will also appoint its own Project Manager, who will oversee all IT aspects regarding delivery of the **Right of Way and Real Estate IT System** solution. Once the System has been accepted and is in implementation, ITS will also be responsible for day-to-day IT operations of the System.

The ITS mission is to establish the strategic technology direction for the State of New York, through innovative information technology (IT) solutions and services, to enable New York State government to improve the lives of citizens, foster economic development, and welcome visitors to New York State.

In the fall of 2012, ITS was created to consolidate IT service delivery to New York State agencies; creating a single agency of more than 4,000 professionals to handle the delivery of the full range of IT services for NYS executive agencies. With this landmark IT Transformation initiative, the State hopes to achieve enhanced IT capabilities to improve government services and enable it to build an IT environment that: maximizes existing resource; meets agency business needs with world class-customer services; creates a talented, innovative IT workforce; increases accountability; and provides cost savings for the State. As part of the State's IT Transformation process, IT customer agencies are grouped into clusters. A cluster is a grouping of agencies that have similar challenges, customers, data, business processes, and common IT needs. NYSDOT is part of the Revenue and Transportation Cluster.

4.9 Consultant Responsibilities

While under Contract #C037856, the selected Consultant shall be responsible for providing a total Right of Way and Real Estate IT System solution that meets the objectives and requirements as stated in this RFP. The selected Consultant shall provide the requested services to produce all contractually-required deliverables (and meet the requirements) specified in the RFP and all its referenced attachments to deliver a total **Right of Way and Real Estate IT System** solution. The Consultant shall perform all activities and tasks required to achieve the objectives, functions, and outputs in a manner that meets all project and contract objectives and performance criteria.

All proposed systems and services provided under the resulting contract shall be consistent with State and Federal laws and regulations and shall be appropriate and acceptable to NYSDOT's management.

Each interested Consultant must become familiar with all RFP requirements. The main body of the RFP as well as its attachments provide details on specific requirements, consultant requirements and responsibilities, and other critical information needed for Consultants to submit responsive proposals to this RFP. Consultants are solely responsible for meeting all the requirements in this RFP prior to proposal submission. Prospective bidders are encouraged to submit written questions before the deadline for submitting proposals.

Submission of a proposal is an affirmation by the Consultant that (1) its organization complies with all requirements and specifications set forth in this RFP and (2) its organization can deliver the **Right of Way and Real Estate IT System** in a manner consistent with the requirements and terms of this RFP and under the resulting contract.

To ensure production viability and a smooth transition of a new **Right of Way and Real Estate IT System** to the NYSDOT production environment and system use, the Consultant will commit fully qualified professional resources to all phases of the project. NYSDOT reserves the right to approve the replacement of key personnel (project leadership; who may have responsibility with the project) as well as all proposed Consultant personnel. The Consultant is required to adhere to the New York State Project Management Guidebook Release 2 for its project management methodology. The New York State Project Management Guidebook Release 2 can be obtained from: <http://www.cio.ny.gov/pmmp/guidebook2/index.htm>

The Consultant is required to assign a single Project Manager to the project. The Consultant's Project Manager will act as the single point of contact with NYSDOT and will have full authority over all vendor resources assigned to the project. On-site attendance by the Project Manager and key personnel is required when called for by the Consultant's project plan. Off-site participation is allowed as long as service delivery is not impaired.

In its performance of the project, the selected Consultant shall be responsible for complying with New York State Enterprise Information Security Office (EISO). In addition, the work of the selected Consultant must be compliant with the following:

1. NYS ITS Policies: <https://its.ny.gov/tables/technologypolicyindex>
2. NYS Information Security Policy NYS-P03-002 (3/10/2017):
<https://its.ny.gov/eiso/policies/security>
3. NYS Information Security Breach and Notification Act: <https://its.ny.gov/breach-notification>

During the life of the project, NYSDOT management will review deliverables and evaluate them for completeness, clarity, adherence to generally recognized standards, and compliance with NYSDOT's intent as conveyed in this RFP and contained in the resulting contract. A deliverable, phase, or milestone will not be considered complete until sign-off has been given by NYSDOT. NYSDOT will only render payment for services and deliverables it accepts.

NYSDOT will contract with a single Prime Consultant to provide a total **Right of Way and Real Estate IT System** solution that will provide the required functionality and workflow process capabilities as detailed in this RFP. The System will be located at the NYSDOT Main Office (50 Wolf Road, Albany NY) and at the NYS CNSE Data Center. The Consultant shall recommend an approach to the design, development, configuration, implementation, and/or maintenance of the System to ensure that a comprehensive and expandable System is implemented and fully controlled to account for full cost of the proposed total solution. The exact approach, solution and methodologies proposed to fulfill the RFP's requirements should be presented via completed RFP **Attachments 16 through 24**. The proposer must address the categories of requested services in their project plan but can organize and plan for the accomplishment of the work based on their experience and expertise with projects of similar scale and scope. The complete System requirements, which identify the required functionality, are provided in **Attachment 16 – Functional Requirements**.

The proposer should recommend an implementation approach for delivering the **Right of Way and Real Estate IT System** solution based on their best practices, expertise and experience and should fully describe that approach within the Technical Proposal. The proposer must respond to all functional requirements defined in **Attachment 16 – Functional Requirements**, regardless of the proposed approach. However, NYSDOT is granting consultants flexibility regarding how to respond to the RFP's many requirements, as grouping is allowed to give vendors flexibility to offer a solution which could be beneficial to both parties.

The selected Consultant shall be responsible for delivering all Systems functional requirements specified in **Attachment 16 – Functional Requirements** via the approach detailed in the RFP's attachments. Questions (prior to the submission of proposals) seeking clarification regarding these requirements are encouraged.

4.9.1 Escrow and Modification of Source Code

The selected Consultant shall place a copy of the source codes of the Consultant-Owned Software and any proprietary or custom-developed software (for the Right of Way & Real Estate IT System Project) -- or Subcontractor-Owned Software into escrow with a licensed escrow agent subject to approval by NYSDOT. NYSDOT approval shall not be unreasonably withheld.

4.9.2 Delivery of Developed Software

All source and object codes for the Developed Software, i.e., all software custom developed for the Right of Way & Real Estate IT System application, shall be provided to NYSDOT during System Implementation to support the maintenance of the Right of Way & Real Estate IT System. This shall include the software, documentation of the customization, and training materials for the maintenance of the customized software. *ITS Standards for Application Lifecycle Management and Documentation is provided as a reference in Attachment 28 - ITS Technology Services Overview Project and Application Lifecycle Standards*

4.10 Deliverable Submittal, Review and Acceptance Process

The selected Consultant and NYSDOT will follow the following deliverable submittal, review and acceptance process for all deliverables except for software.

Submittal Process

The Consultant shall submit the deliverable to the assigned NYSDOT Project Manager(s) (PMs). An electronic copy is preferred.

Review Process

1. The PM(s) consults with Program Area to develop lists of reviewers and approvers.
2. Electronic copies of the deliverable are distributed to reviewers and approvers.
3. The Consultant will schedule a meeting with designated reviewers and approvers to provide a high-level walkthrough of the document to facilitate review.
4. The PM will schedule a review meeting with reviewers and approvers. They are notified of the importance of reviewing the deliverable and that it is essential for them to have read and developed comments before the meeting.

5. The Review Meeting will be held. At the meeting, the document is reviewed page-by-page. Minor in-line changes will be made using Word's 'Track Changes' feature. Comments will be inserted into the document where appropriate. The originator of each comment will be noted.
6. NYSDOT will make every reasonable effort to provide the review comments to the Consultant within (ten) 10 business days from submittal. It should be noted that all submittals not received before noon will be considered to have been submitted the following day.
7. It is expected that NYSDOT will receive the revised documents addressing all comments within 5 business days of the return of the original submittal to the Consultant.
8. NYSDOT will review the revised submittal and return comments to the Consultant within 5 business days. No new comments will be made unless either the original comments have not been adequately addressed or modifications made in response to the original comments have raised new issues or concerns.
9. The Consultant will address all comments and resubmit within three (3) business days.
10. NYSDOT will complete the "Final Review" within two (2) business days. If there are outstanding issues that remain, NYSDOT and the Consultant will immediately escalate them to the Sponsors and, if necessary, the Executive Management Committee for resolution.

Acceptance Process

1. When the deliverable has been accepted, the Consultant will be so notified and they will submit an invoice via email to NYSDOT Project Manager(s). Signed invoice to follow in regular mail.
2. NYSDOT Project Manager(s) will forward the invoice to designated NYSDOT payment person along with a statement indicating that the deliverable fulfills contract requirements and has been accepted.
3. Designated NYSDOT payment person will then forward the invoice to Accounting for payment.
4. For all proposed software-related deliverables, **Attachment 22 - System Testing & Acceptance** requirements will govern the Acceptance Process.

4.11 Contract Transition

This task shall only be required (1) if the Consultant is not designated for award of a contract to replace this contract and (2) at the discretion of the NYSDOT Project Manager. To ensure a seamless transition between the Consultant and a future designated Consultant, NYSDOT will establish a transition period during which the Consultant shall work with the future designated Consultant to provide the necessary coordination and services without interruption during the transition.

The selected consultant shall develop a 30-day Transition Plan, ready to execute prior to completion of the contract period (or extension(s), if any). The Plan shall ensure a transfer of the Right of Way & Real Estate IT System Services without interruption of service if the Consultant

is not designated for award of a replacement contract. The Plan shall be submitted to the NYSDOT Project Manager for approval.

At the discretion of the NYSDOT Project Manager, the Consultant shall participate in meetings with partner agencies and the future designated Consultant to address any concerns prior to transition.

The Plan shall identify the operational requirements during the transition and provide technical support for any systems malfunctions. The Plan shall detail a schedule of staffing necessary to transition the program and include an interim status report.

The Plan shall include the process to transfer all physical and intellectual assets. The Consultant shall return, to the NYSDOT Project Manager, all NYSDOT property including any data. At the end of the contract, the Consultant shall remove such data from any electronic equipment owned by the consultant.

5 PROPOSAL FORMAT AND CONTENTS

For the purposes of evaluation, each proposal must be submitted in two parts, bound separately. Part I shall consist of the Technical and Management submittal. Part II is the Cost and Administrative submittal. Each part of the proposal must be complete in itself in order that the evaluation of both parts can be accomplished independently and concurrently, and the Technical and Management submittal can be evaluated strictly on the basis of its merits. Cost information is not to be included in the Part I submittal. Your proposal should follow the format listed below.

Web links, photographs, and illustrations (except for the organizational chart) are not to be included unless specifically required in this section. Photographs or illustrations on the binder cover are acceptable.

NOTE: NYSDOT will protect confidential and proprietary information from disclosure to the extent permitted by the Freedom of Information Law (“FOIL”), Article 6 of the Public Officers Law. If an offeror believes information included in their proposal is confidential and proprietary, they should identify those page(s) of their proposal which contain such information as “confidential and proprietary”. Additionally, offerors need to explain the reason(s) why this information should be considered exempt from public disclosure under FOIL. This information is to be provided in the Cover Letter.

Note: Cost information is not to be included in the Part I submittal, and Technical and Management information is not to be included in Part II submittal.

5.1 Part I: Technical and Management Submittal

Part I shall include the following sections:

<input type="checkbox"/>	One (1) original plus Nine (9) Printed and bound (in 3-ring binder) hard copies of Part I plus one copy of Part I on Thumb-drive in Adobe PDF format.
<input type="checkbox"/>	Securely sealed and clearly labeled with the consultant’s name, address, and telephone number and the title “ <i>Right of Way and Real Estate IT System Services for NYSDOT RFP #C037856, Part I — Technical and Management Proposal</i> ”
<input type="checkbox"/>	Signed Cover Letter on official business letterhead (2-page limit)
<input type="checkbox"/>	Table of Contents identifying each major section and page numbers
<input type="checkbox"/>	Narrative Description
<input type="checkbox"/>	Approach, Scope of Services and Schedule
<input type="checkbox"/>	Organization and Staffing
<input type="checkbox"/>	Experience
<input type="checkbox"/>	Complete and submit Attachment #15: Key Personnel Resume and References
<input type="checkbox"/>	Complete and submit Attachment #16: Functional Requirements
<input type="checkbox"/>	Complete and submit Attachment #17: Interface Requirements
<input type="checkbox"/>	Complete and submit Attachment #18: Firm Experience
<input type="checkbox"/>	Complete and submit Attachment #19: Project Plan & Staffing
<input type="checkbox"/>	Complete and submit Attachment #20: OITS Technology Services Standards Overview
<input type="checkbox"/>	Complete and submit Attachment #21: Data Conversion
<input type="checkbox"/>	Complete and submit Attachment #22: System Testing & Acceptance
<input type="checkbox"/>	Complete and submit Attachment #23: Support & Maintenance

1. Cover Letter, and Title page, indicating:

Name, address and phone number of the proposer, and the name, title, address, email, and telephone number of person(s) with authority to negotiate and who may be contacted during the procurement process. Provide a brief description of the proposed approach, work effort and resulting product. Confidential and proprietary information should also be identified and addressed in this section. Not to exceed a single page.

2. A Table of Contents.

3. Narrative Description

Provide a discussion on the important issues involved in the implementation of this effort. Include enough substantive discussion to demonstrate an understanding of NYSDOT project objectives and familiarity with applicable laws, rules, etc.

4. Approach, Scope of Services and Schedule

Describe the approach for performing the work and accomplishing project objectives. Provide a detailed scope of services which describes by task what will be done. A general scope of services is outlined under Section 4. You may base your scope of services on these tasks, or suggest alternative tasks which could improve the ability of the project to meet its objectives. NYSDOT wants to allow maximum flexibility for the inclusion and consideration of ideas, initiative and creativity of the proposer. Alternative tasks and suggestions are encouraged and will be reviewed with interest within the framework of the stated objectives and scope of services for the project. Fully explain and justify your approach, however, if it significantly departs from the general scope of services or if the general scope of services requires clarification or re-working. Also, include a schedule for completion of the project showing the duration of each task and all major milestones, and include a list of technical assumptions.

5. Organization and Staffing

Provide an organizational chart for the project showing the names of the Consultant's Project Manager and Key Personnel. Discuss management plan to ensure effective and efficient delivery of services while meeting the project objectives. If subconsultants are to be used, explain the specific need for the expertise and describe the arrangements. Discuss your plan for phasing project personnel into the effort. The Consultant's Project Manager shall serve as the primary contact with the NYSDOT Project Manager. The Consultant's Project Manager is responsible for the performance of all key personnel, production staff and support staff assigned to this Agreement by the Consultant, as well as contractual matters on the Consultant's side. Describe the level and type of interaction with NYSDOT.

6. Experience

Provide a list of three (3) projects currently in progress and three (3) projects that have been completed within the last five (5) years which are similar to this effort. **NYSDOT Project and References should be included, but will not count towards the three projects requirement.** Provide Consultant Key Personnel Resume and Reference form in **Attachment 15**. Indicate proposed key personnel who are, or have worked, on such projects. Include names, addresses and phone numbers of contact points with the listed clients. NYSDOT reserves the right to request information from any source so named.

The Key Personnel (as identified in **Attachment 15 – Key Personnel Resume and Reference form**) proposed by the designated Consultant are an important factor in the evaluation of its proposal. Thus, the Department expects that the personnel proposed will be available at the start of the contract term. As a result, any personnel proposed by the designated Consultant that does not perform the required work under the contract for the initial 30 calendar days after the effective date of the Notice to Proceed will, at NYSDOT's discretion, result in a \$10,000 charge per personnel title as Liquidated Damages.

In addition, if at any time during the term of the contract a member of the Consultant's Key Personnel needs to be replaced, the Consultant shall have 30 calendar days to submit a qualified Candidate (same level of experience and expertise) to NYSDOT for approval. In the event the Consultant is unable to provide a qualified Candidate within 30 calendar days, and NYSDOT must use in-house NYSDOT staffing, or NYSDOT must hire a separate consultant to provide the personnel, NYSDOT will, at its discretion:

- Charge and bill the Consultant \$100/hour for the use of in-house NYSDOT personnel, or
- Charge and bill the Consultant a 10% administrative fee on top of and in addition to whatever NYSDOT is billed by an out-of-house consultant. If, for example, NYSDOT must hire a separate consultant to provide a service at \$100/hour, NYSDOT will charge and bill the Consultant \$110.

The determination that a Candidate is "qualified" is the sole decision of NYSDOT. All amounts specified above will be billed as an off-set against future Consultant invoices.

5.2 Part II: Cost and Administrative Submittal

Part II of the proposal consists of two general sections:

- A Cost Proposal, which shall set forth the lump sum amount for performing the work in the scope of services; and
- The Administration Section, which shall specify the proposer's acceptance of the terms and conditions contained in the Draft Contract enclosed as **Attachment 1** to this solicitation, as well as several other administrative items.

Part II – Cost and Administrative Submittal

<input type="checkbox"/>	One (1) original plus Three (3) Printed and bound hard copies of Part II plus one (1) copy of Part II on Thumb-drive, in Adobe PDF format and MS Excel 2016 compatible format of Attachment#24 - Cost Proposal Workbook
<input type="checkbox"/>	Securely sealed and clearly labeled with the title " <i>Right of Way and Real Estate IT System Services for NYSDOT RFP #C037856, Part II — Cost and Administrative Proposal</i> "
<input type="checkbox"/>	Required Cost information (complete and submit Attachment 24: Cost Proposal Workbook)
<input type="checkbox"/>	Complete and submit online certification or hard copy of Vendor Responsibility Questionnaire
<input type="checkbox"/>	Complete and submit Attachment #2: Consultant Information and Certifications (sign both Sections II and III)
<input type="checkbox"/>	Complete and submit the Attachment #3: Form AOR Acknowledgement of Receipt
<input type="checkbox"/>	Complete and submit Attachment #4: Procurement Lobbying Law Forms
<input type="checkbox"/>	Complete and Submit Attachment #6: Non-Collusive Bidding Certification

<input type="checkbox"/>	Complete and submit Attachment #7: Vendor Assurance of No Conflict of Interest or Detrimental Effect
<input type="checkbox"/>	Complete and submit: Attachment #11: M/WBE/SDVOB Participation Information Form
<input type="checkbox"/>	Complete and submit (if applicable): Attachment #11a: M/WBE/SDVOB Subconsultant Participation Solicitation Log AND Goal Attainment Explanation Letter
<input type="checkbox"/>	Complete and submit Attachment #13: New York Business Reporting
<input type="checkbox"/>	Complete and submit Attachment #14: Diversity Practices Questionnaire

The above general sections shall include the following:

1. **Cost Proposal**

NYSDOT requires that all cost information be presented using the RFP-provided Microsoft Excel spreadsheets (see **Attachment 24 - Cost Proposal Workbook**) in both a hardcopy Part II response and an electronic copy on CD, securely presented in the Part II response. The accuracy of calculations and formulas in the spreadsheet are the sole responsibility of the offeror.

When completing the Excel cost worksheets included in **Attachment 24 – Cost Proposal Workbook**, offerors shall follow these instructions:

1. The one-time and recurring costs the proposer provides within the Cost Proposal must include ANY AND ALL one-time and recurring fees, charges, or costs for the duration of the contract, including but not limited to:
 - a. All direct and indirect costs, all overhead, fees, profit,
 - b. Labor, parts, shipping, material and equipment cost;
 - c. Software licensing;
 - d. Emergency work;
 - e. Maintenance services as specified herein;
 - f. Repairs and replacement of major or minor parts as necessary;
 - g. Administrative, reporting or other requirements;
 - h. Travel costs, parking fees, and any other ancillary fees including permits; licenses, insurance, etc., and
 - i. Services not explicitly stated in these specifications, but necessarily attendant thereto as applicable to the associated item for which the rate/fee is being quoted.
2. Terminology used in the cost spreadsheets for products and services must be consistent with the terminology used in the technical portion of the response.
3. All worksheets included in **Attachment 24 - Cost Proposal Workbook** must be completed in order for the response to be considered complete.
4. Proposer shall not make entries in any colored cells in the **Attachment 24 - Cost Proposal Workbook** Excel spreadsheets. Changes should not be made to the spreadsheet format or formulas. Proposers shall not attach any additional or qualifying information.

Cost Proposal Instructions

Use **Attachment 24 - Cost Proposal Workbook** to complete the Cost Proposal response form. This attachment contains instructions to guide completion of this form. Should any questions arise pertaining to this form and its instructions, please submit them to the designated NYSDOT contact person before the Question & Answer deadline.

2. Administration Section

All signatures on each copy must be an original.

a) Vendor Responsibility

In accordance with the NYS Finance Law, NYSDOT will only make contract award to vendors that are determined to be responsive and responsible. All selected offerors of contracts valued at \$100,000 or more will be required to submit a Vendor Responsibility Questionnaire through the Office of the State Comptroller website via <http://www.osc.state.ny.us/vendrep/index.htm> before negotiation of a contract. Offerors must certify the accuracy of the information they provide in the questionnaire. In addition, any subconsultant providing services valued at \$100,000 or more is required to submit Vendor Responsibility Questionnaire through the Office of the State Comptroller website.

b) Acceptance of Agreement Terms and Conditions

Offerors shall complete and submit the “Consultant Information and Certifications Form,” included as **Attachment 2** to this RFP, to indicate their acceptance of all of the terms and conditions contained in the Draft Contract (**Attachment 1**). Attachment 2 also requires the signature of an official authorized to bind the offeror to all of its provisions, a statement certifying that the proposal shall remain valid for at least 365 days, a statement that the firm accepts the RFP’s Scope of Services ‘as-is’, and a statement that, if awarded the contract, the offeror will comply with all the requirements of the RFP, including all of its attachments. Altering this form without the prior expressed written approval of the New York State Department of Transportation is prohibited and may lead to the proposal being deemed non-responsive and subsequently dismissed. **No exceptions to any terms and conditions of the Draft Contract (Attachment 1) will be entertained by NYSDOT.** Conditional proposals will be deemed non-responsive.

c) Modification Acknowledgement Forms

The Proposer shall include a completed **Attachment 3 - Form AOR**, acknowledging receipt of any Modifications issued by the Department.

d) Procurement Lobbying Law

All proposers should become familiar with NYSDOT’s Procurement Lobbying Law Interim Guidelines and Procedures. The document is located at: https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/pll_gandp_v1.pdf.

Filing the two required forms is mandatory for all consultants in order to be considered for contract award. These Forms are:

Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b) https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offers_affirmation_and_agreement_form.pdf

Offerer Disclosure of Prior Non-Responsibility Determinations https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offer_disclos_prior_non.pdf

Failure to submit the required PLL forms with your proposal will result in elimination from consideration for contract award.

For additional information, refer to Attachment 4: Procurement Lobbying Law Compliance.

- e) Non-Collusion Bidding Certification
All Proposers shall submit a **completed Attachment 6 - Non-Collusive Bidding Certificate**.
- f) Vendor Assurance of No Conflict or Detrimental Effect
All Proposers shall submit a completed **Attachment 7 - Vendor Assurance of No Conflict or Detrimental Effect**.
- g) M/WBE/SDVOB Participation
In Part II of your firm's proposal, provide the following:
 - Complete **Attachment 11 - M/WBE/SDVOB Participation Information** and if applicable, **Attachment 11a - M/WBE/SDVOB Subconsultant Participation Solicitation Log** and Goal Attainment Letter. Provide the legal names of all certified M/WBE/SDVOB consultants (prime and/or subconsultant).
- h) New York Business Reporting
All Proposers shall submit a completed **Attachment 13 - New York Business Reporting**.
- i) Diversity Practices Questionnaire
NYSDOT has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of respondents to this procurement is practical, feasible, and appropriate. Accordingly, respondents to this procurement are required to include as part of their response to this procurement **Attachment 14 - Diversity Practices Questionnaire**. All firms shall submit a completed questionnaire. Firms shall separately submit all additional information required by **Attachment 14 - Diversity Practices Questionnaire**, where indicated by the Questionnaire (Questions 1, 4, 5, 6, and 7).

Use Contract Number C037856 wherever requested in the forms. Please call or e-mail the individuals identified as the Designated Contacts in Section 1.6 of this RFP if you have any questions regarding how to complete this required form.

Per the Procurement/Lobbying Law of 2005, any person who wishes to contact NYSDOT regarding this project during the restricted period (i.e. from advertisement through designation), may only contact the persons noted in Section 1.6 to this solicitation.

6 CRITERIA FOR EVALUATION OF PROPOSALS

6.1 General

Proposals shall be pre-screened to determine if they meet the minimum RFP responsiveness (reference Section 1.5). Those which do not shall be deemed non-responsive and shall be removed from further consideration.

Proposals shall then be evaluated by the Department using a Best Value Method evaluation process based on the technical and cost criteria described below. Technical proposals will be scored based on the information provided under Section 5.1 in accordance with the pre-established criteria listed in Section 6.3. The cost portion of Section 5.2 will be point scored in accordance with the pre-established criteria listed in Section 6.4. *Note the weighting applied to each criterion.*

Technical and Management Proposal evaluation will be accomplished by a representative committee comprised, as appropriate, of technical, program and management personnel. Committee members will score each proposal individually and then meet as a group to discuss the proposals. Evaluators will be allowed to revise scores on the basis of the committee discussions. Only proposals determined to be technically acceptable and susceptible for contract award will be considered further and have their cost proposal included in the selection process.

Proposers responding to this RFP may be requested to clarify issues or to provide additional insights into their proposal through written clarifications and/or technical interviews. If written clarifications are required to complete the technical evaluation of proposals, evaluators will be allowed to revise their technical scores based on this additional information. Furthermore, the Department reserves the right to ask clarifying questions regarding each cost proposal (Part II) and M/WBE/SDVOB participation as well.

The Department reserves the right to request best and final offers from firms that are determined to be susceptible for contract award.

An award shall be made to the offeror whose proposal receives the highest total score after considering all technical and cost/price evaluation factors. Should NYSDOT opt to request best and final offers, it reserves the right to re-score technical and cost proposals. Further, NYSDOT reserves the right to re-score technical and cost proposals should a firm withdraw from this solicitation or be deemed non-responsive after initial evaluation and scoring.

Note: In the event two or more proposals are found to be “substantially equivalent”, the Department reserves the right to award the contract under the terms of State Finance Law §163 (10)(a).

At the conclusion of the evaluation process, an announcement of the Department’s designation(s) will be posted on the NYSDOT web site. All non-designated firms shall be notified in writing regarding the results from the solicitation, and will be offered an opportunity to hold a debriefing. Further, it is expressly understood that this Request for Proposals does not commit

the Department to award a contract, pay any costs incurred in the preparation of a proposal to this request, or to procure or contract services or supplies. Further, the Department shall have no obligation or liability whatsoever to the vendor selected as a result of this solicitation unless and until a contract satisfactory to the Department is approved and executed by the vendor and all necessary State officials.

6.2 Pre-Screening of Proposals

NYSDOT will conduct a pre-screening of each proposal to ensure all contents have been submitted in accordance with the minimum proposal responsiveness requirements as specified in the RFP. RFP specifications include that it is NYSDOT's sole discretionary determination as to whether a proposal is complete (reference "Minimum RFP Responsiveness" Section 1.5). Proposals which do not meet the mandatory specifications in the Minimum RFP Responsiveness section will be deemed non-responsive by NYSDOT and will not be considered further.

As part of the pre-screening process, the proposed MBE and WBE participation percentages offered for M/WBE prime consultants or subconsultants certified by Empire State Development will be reviewed (**Attachment 11 - M/WBE/SDVOB Participation Information**). To count towards the State's combined M/WBE participation goal, each firm must be currently listed in the NYS Empire State Development M/WBE Directory. If the proposed MBE and WBE participation is less than the established 6% percent MBE, 13%/WBE and 6% SDVOB goals, then the firm's evidence of a Good Faith Effort (**Attachment 11a - Subconsultant Participation Solicitation Log**) to achieve participation in the goals will be reviewed, along with the firm's letter of explanation (**Goal Attainment Explanation Letter**) as to why it was unable to meet the goal(s). During the review process, which will include verification of a firm's good faith effort evidence, if it is determined by the Department that the firm did not provide an acceptable good faith effort, then the proposal will be deemed non-responsive and will be removed from further consideration.

6.3 Technical and Management (Up to 60 Points)

The technical and management proposal will be point scored and will represent 60% of the total score for a proposal. The major evaluation criteria are listed in descending order of importance.

1. Functional Requirements, as outlined in **Attachment 16 – Functional Requirements** including: **(Up to 20 Points)**
 - a. Program and Liaison
 - b. Acquisition
 - c. Appraisal
 - d. Property Management (Signs, Surplus Property, Permits)
 - e. Technology (GIS / Mobile Access / Portal)
 - f. Administration (Workflow/Document Management / Reports / Consultant Management)
2. Experience (Firm & Key Personnel) **(Up to 15 Points)**
 - a. Quality and relevance of current and completed (within the last 5 years) experience of firm

- b. Quality and relevant experience, education and training of Key personnel assigned to project
 - c. Plan for retaining and phasing in key personnel into project
 - d. Reference interviews to support/refute experience claims
 - e. Organization and Staffing
3. **Project Plan and Staffing (Up to 13 Points)**
- a. Proposal demonstrated understanding of project scope and objectives
 - b. Demonstrated sufficient allocation of resources to meet project needs
 - c. Initiative and creativity of proposal
 - d. Completeness and reasonableness of schedule
 - e. Demonstrated ability to meet project deadlines
 - f. Training and Knowledge Transfer
4. **Technical Architecture Requirements (Up to 12 Points)**
- a. Demonstrated ability to meet all Information Technology Requirements including:
 - Application Strategy, Architecture and Planning
 - Detailed Requirements Definition
 - System Design Specification
 - System Construction: Configuration/ Programming/ Development/ Integration/ Data Migration
 - System Testing and Acceptance Test Planning
 - Product Implementation and Deployment
 - Communications
 - Change Management
 - Post Implementation Warranty, Maintenance and Support
 - Technology Standards
 - Security Standards

6.4 Cost (Up to 30 Points)

The cost portion of the cost and contract proposal will be point scored and will represent 30% of the total score for a proposal. The calculation of a cost score will be determined by the following method:

1. The lowest cost Proposal will be perfected to receive the full amount of points.
2. Proposals with higher cost Proposal will receive proportionally lower cost Proposal scores.
3. This point total will be calculated by dividing the lowest proposed price by the total price of each Proposal, multiplied by the maximum weight for the cost Proposal (30%).

6.5 Technical Interviews (10 Points)

Technical Interviews will be held for firms offering proposals which are deemed to have a mathematical chance of being susceptible to contract award and have made the short-list after completion of initial Best Value considerations.

Short-listed firms will receive a Technical Interview invitation package, which will include instructions, areas which NYSDOT is seeking further clarifications, and may include additional clarification questions from the Technical Evaluation Committee (TEC). Firms invited to attend Technical Interviews shall present a brief overview of key personnel present, make brief opening presentation (limited to 5 minutes), and respond to TEC member questions.

Technical Interviews will be held at the Department's offices located in Albany, New York at a date and time to be determined by NYSDOT.

TEC members will evaluate Technical Interviews using the RFP's evaluation criteria and weights listed below. A separate score sheet shall be used to record TEC Technical Interview findings and scores. TEC members shall score the technical interview independently first, then meet as a group to discuss their findings and scores. As a result of these group discussions, members of the TEC may revise their technical interview scores at this time. Reasons for score changes shall be recorded on the applicable TEC member's hardcopy scoresheet as well as in Contract Management's electronic composite scoresheet. Once scoring of each Technical Interview has concluded, TEC members shall sign/date and surrender their Technical Interview scoresheets to Contract Management.

1. Responsiveness to questions and concerns raised by the TEC; ability to satisfactorily answer all TEC clarifications and questions. **(Up to 3 Points)**
2. Clarity and quality of presentation; team chemistry. **(Up to 3 Points)**
3. Adequacy of demonstration (all Key Personnel in attendance with a short introduction and discussion of their capabilities, experience/expertise and their proposed project roles), adequacy of approach; adequacy of the tasks/roles the Consultant will undertake as part of the project team to deliver a successful ROW & RE IT System solution and demonstrated knowledge of the proposal. **(Up to 3 Points)**
4. Further insight and understanding of the consultant's proposed experience (firm and all key personnel). **(Up to 1 Point)**

6.6 Written Technical Clarifications

The Department reserves the right to seek written clarifications from firms submitting Proposals to assure a full understanding of their responsiveness to the technical requirements. A Proposer may be required to provide written clarifications at any time during the Proposal evaluation process. Evaluators will be allowed to revise their technical Proposal scores based on receipt and consideration of this additional clarifying information and follow-up TEC discussions. Reasons for any score changes shall be documented.

6.7 Proposal Shortlisting

The shortlisting rule for this solicitation shall be: All proposals will be scored for both technical and cost. The technical and cost scores will be combined in accordance with the identified weighting system, and using the combined scores, the proposals will be rank ordered, highest to lowest. The top four (4) scoring proposals will advance to the shortlist for further consideration

by the evaluation team. If any other proposal scores are within five-points of the 4th highest ranked proposal, they will be added to the shortlist and will be considered further. Firms submitting proposals which do not qualify for the shortlist shall not be included in the remaining evaluation process and shall be classified as: 'Did Not Finish' in the procurement record. Firms which submit proposals which qualify for the shortlist shall be invited to attend the interview and product demonstrations.

6.8 Reference Checks

Reference checks (to verify offered experience) shall be required to complete the evaluation of technical proposals. References shall be contacted by Contract Management, via e-mail, utilizing a reference check questionnaire that is conformed to the requirements listed in this RFP. Reference check feedback will be forwarded to the TEC for their considerations during the after-group discussion phase. The TEC may meet to consider reference check information. Evaluators will be allowed to revise their technical scores based on consideration of this additional information and their follow-up discussions. Changes to scores and their reasons shall be recorded on written scoresheets as well in electronic form.

6.9 Best & Final Offer (BAFO, Optional) and Proposal Withdrawal

The Department reserves the right to request Best and Final Offers from firms which make the shortlist. Any Best and Final Offer request may ask additional further clarifying technical and/or cost Proposal questions of Proposers to further clarify their submitted Proposals. The Department also may request a cost only BAFO. Should the Department opt to request BAFOs, all shortlisted Proposers will receive a BAFO request. Responding Proposers will be allowed to submit a Best and Final Offer (technical and/or cost); Proposers may opt to not submit a BAFO. TEC members will be allowed to revise the technical scores for the written technical Proposal based on considerations of any new or changed technical Proposal information contained in any Best and Final Offer (TEC members will re-sign and date the score sheets). If changes to a Proposer's technical Proposal lead to corresponding, necessary revisions to their Cost Proposal (or should a firm opt to clarify their Cost Proposal) or should the Department opt to request cost-only BAFOs, the Department's Designated Representative shall make the necessary, appropriate adjustments to that Proposer's cost Proposal evaluation.

Should any firm withdraw their Proposal after a BAFO request, the Department will remove that Proposal's technical and cost information from the Best Value evaluation documentation and shall recalculate the remaining field's technical and cost scores (without the withdrawn Proposer's information).

6.10 Final Best Value Evaluation

After evaluation of all technical submissions and completion of the technical interviews of the shortlisted proposals, the Department will perfect (curve) the weighted written Technical Proposal scores so that the highest weighted written Technical Proposal score will be assigned a perfect score of 70 points with the other lower weighted written Technical Proposal scores adjusted proportionately downward. Perfected cost scoring results (up to 30 points) will be added to the perfected technical Proposal score to generate a tentative final best value score by Proposer. Proposers shall be ranked in Final Best Value score order (highest to lowest).

Tie-Breaking Rule: Should any of the tentative final Best Value scores of one or more Proposals lie within 2 points of each other, then State Finance Law Section §163(10)(a) shall be used to settle any ties.

Once all possible score ties have cleared, the Department will determine the Final Best Value Score, where after the Proposal with the highest Final Best Value score shall be recommended to the Department's Executive Management for contract award.

6.11 Consultant Selection Recommendation & Tentative Contract Award

A consultant selection and designation memo shall be prepared and forwarded to the applicable Department's Executive Manager(s) with an accompanying evaluation process results report. The memo shall recommend selection of the top-ranked Best Value Consultant for tentative contract award. The Executive Manager(s) will be asked to concur with the final conclusion of the Proposal evaluation process and designate the Best Value consultant based upon the above results.

Should negotiations with the Best Value Consultant fail to produce an agreed upon contract(s), then the Department's Executive Management will designate the tentative contract award to the next highest ranked Best Value Consultant. The Department will then enter into negotiations with the second-ranked Best Value Consultant. This process may repeat itself until acceptable contracts are consummated.

At the conclusion of the evaluation process, an announcement of the Department's designation(s) will be posted on the Department website. All non-designated firms shall be notified in writing regarding the results from the solicitation, and will be offered an opportunity to hold a debriefing. Debriefing request should be made to the Department's Designated Contact within 5 calendar days of the designation notice. Further, it is expressly understood that this Request for Proposals does not commit the Department to award a contract, pay any costs incurred in the preparation of a Proposal to this request, or to procure or contract any services or supplies. Further, the Department shall have no obligation or liability whatsoever to the Consultant selected as a result of this solicitation unless and until a contract satisfactory to the Department is approved and executed by the Consultant with final approval by the NYS Attorney General's Office and the NYS Office of the State Comptroller.

7 ADMINISTRATIVE SPECIFICATIONS

7.1 Proposal Submission

The proposal shall be signed by an official authorized to bind the offeror.

Proposers shall submit nine (9) copies of Part I and three (3) copies of Part II.

Your proposal must be received by NYSDOT by Noon on **August 2, 2019**. The proposal must be addressed to:

Ms. Micheleen Gregware
NYS Department of Transportation
50 Wolf Road, 6th floor
Albany, New York 12232
Attention: **#C037856 – RIGHT OF WAY AND REAL ESTATE IT SYSTEM
SERVICES FOR NYSDOT**

7.2 State's Rights

All proposals, upon submission to NYSDOT, shall become its property for use as deemed appropriate. By submitting a proposal, the consultant covenants not to make any claim for or have any right to damages because of any misinterpretation or misunderstanding of the specification, or because of any misinformation or lack of information. With regard to proposal submitted, NYSDOT asserts the following prerogatives with regard to proposals submitted:

- a. To accept or reject any or all proposals;
- b. To correct any arithmetic errors in any or all proposals;
- c. To change the proposal's due date upon appropriate notification to interested firms;
- d. To eliminate any mandatory RFP requirement or specification unmet by all offerors in the evaluation of received proposals;
- e. To adopt any or all of a successful offeror's proposal;
- f. To negotiate modifications to the scope, milestone payment schedule and total cost, and contract terms and conditions with the selected offeror prior to contract award only if it is in the best interest of the state to do so;
- g. To disqualify an offeror from receiving the award if such offeror, or anyone in the offeror's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts;
- h. To revise/amend any provision of this RFP by written notification to offerors, prior to proposal submission;
- i. To eliminate any requirement that is found to be unmet by all offerors;
- j. To make inquiries, by means it may choose, into the offeror's background or statements made in the proposal to determine the truth and accuracy of all statements made therein;

- k. To select and award the contract to the offeror whose proposal represents the best value to NYSDOT;
- l. Should NYSDOT determine that the negotiations with the selected offeror will not result in a contract, to begin contract negotiations with the next-best-value offeror(s) responsive to this RFP — without again requesting proposals;
- m. Any contract entered into pursuant to an award of this solicitation shall contain a provision which grants the option to extend the terms and conditions of such contract to any other New York state agency. However, any response to this solicitation shall be based solely on the purpose of this solicitation and shall not factor in the possibility that this contract may, in the future, be applicable to other state agencies. Please be advised that any award made pursuant to this solicitation shall be based on the specific requirements of this solicitation only.

7.3 Consultant Responsibility when Proposing Former NYSDOT Employees

It is the consultant's responsibility to ensure they propose staff that is eligible to work on the proposed project. It is an individual's responsibility to comply with the Public Officer's Law.

The following procedure applies if either of the following criteria is met.

- It is two years or less between the date that the individual is proposed and the individual's date of separation from the State.
- The individual proposed has worked on the project while employed by NYSDOT regardless of how long ago they left NYSDOT.

Procedure

- Before the consultant proposes an individual, the individual must obtain an opinion from the New York State Joint Commission on Public Ethics (<http://www.jcope.ny.gov/>) that approves their participation in the project as they are proposed.
- A copy of this opinion must be on file in the consultant's office and available for review by NYSDOT if requested.
- Failure to obtain New York State Joint Commission on Public Ethics approval for an individual's participation in a project may jeopardize the firm's designation for that project.

7.4 Method of Payment

Payment for services provided under the agreement resulting from this RFP will be fixed for the duration of the agreement and paid via lump sum payment based on the acceptance of completed deliverables, by phase as identified in **Attachment 24 – Cost Proposal Workbook**, unless changed by an executed supplemental agreement. The Consultant will designate a Billing Representative who will be responsible for resolving any invoicing issues during the term of the Contract. The cost for any additional services shall be negotiated and agreed upon by both parties using the Agreement's fixed labor rates. Payment for specific services provided under

the project may be via specific hourly rate reimbursement and compensation for actual non-salary costs incurred in the performance of the scope of services, if such is in the best interest of the STATE.

Requests for progress and final payments shall be made by the designated consultant on standard payment request forms (FIN 421). Use proper procedure for billing each deliverable: Submit a draft billing to NYSDOT's assigned Project Manager via the following sample electronic billing: <https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions>. The sample spreadsheet contains all of the proper, required billing forms, as well as a sample billing. The Project Manager will respond via e-mail either with comments/corrections or with an approval to submit the final billing via signed hardcopy. The last and final payment will become due and payable within thirty (30) days after delivery of the final deliverable(s) and a standard NYS FIN 421 payment request forms.

7.5 Information for the Selected Consultant

Registration with NYSDOT

Consultant firms entering into contracts with the New York State Department of Transportation (NYSDOT) as prime consultants, joint venture partners or subconsultants, are required to electronically register their firm using the Consultant Selection System web application (CSSWeb). All consultant firms entering into Non-Architectural/Non-Engineering agreements are required to create and register an account to: 1) Create and assign Consultant Identification Numbers (CINs) for each office registered by the firm; and 2) Provide general firm information including, but not limited to: legal firm name; Federal Identification Number (FEIN); ownership type; DBE, MBE and/or WBE status; firm principals; and office(s) address information. All consultant firms participating in a potential agreement (negotiations) must be registered electronically with NYSDOT prior to that agreement being forwarded to the Office of the State Comptroller for approval. Registered firms are responsible for verifying and updating their registration information for the duration of the agreement.

Consultant Firm Registration instructions are available at:

<https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions>

Questions regarding the CSSWeb application and firm registration should be directed to the CSSWeb Administrator by email at css@dot.state.ny.us or by telephone at 518-457-2600.

Registration with Statewide Financial System (SFS)

Should this solicitation lead to a designation, the Prime consultants will be required to electronically register with the Statewide Financial System (SFS) - if not already registered. NYSDOT will initiate the registration process in the SFS application and then contact the Prime consultant to provide them with further direction for completion of the registration process. The result of this process is an established SFS vendor number assigned to the Prime consultant. If a firm has already registered in SFS in connection with another procurement effort, it will likely not need to re-register for this opportunity. However, a SFS vendor number is firm name specific. Since many firms have different variations of their business identities, firms will be required to register in the name of the business entity that NYSDOT is doing business with.

Consultant Employment Disclosure Requirements of this Project

Go to Office of the State Comptroller's Web site (<http://www.osc.state.ny.us/procurement/consultantdisclosure.doc>) to become familiar with Consultant Employment Disclosure requirements, which went into effect June 19, 2006. The Consultant selected for this solicitation shall be required to complete 'State Consultant Services – Contractor's Planned Employment' (**Form A, Attachment 5**) and submit when the contract is signed. For each contract year thereafter, the Consultant shall complete the "State Consultant Services Contractor's Annual Employment Report" (**Form B, Attachment 5**) and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the Department of Transportation on or before May 15th of each year the contract is in effect.

Insurance Requirements of this Project

Please carefully read the terms and conditions of the Draft Contract appended as **Attachment 1** of this RFP. Your attention is drawn to the insurance requirements for this Project that are contained in Article 12 of the Draft Contract. These insurances are mandatory for the firm(s) selected as a result of this solicitation and will not be waived.

Contractor Tax Certification

Per Section 5-a of the NYS Tax Law, all vendors selected for contracts in excess of \$100,000 for the sale of goods or services must complete and submit Forms ST-220-TD and ST-220-CA (Contractor Certifications) prior to negotiation of a contract with State agencies. You should make yourself familiar with these forms by visiting the following Web sites: http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf (Form ST-220-CA) and http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf (Form ST-220-TD)

Certification Form EO- 177

In accordance with Executive Order No. 177, the successful Proposer will be required to certify that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law. Certification Form EO-177 will be provided with the contract documents. The completed and signed Certification must be returned with the firm's executed contract agreement.

7.6 Inquiries and Information

All questions concerning this solicitation must be directed *only* to the individual specified in Section 1.6 of this RFP. The last date to submit questions for this solicitation is stated in Section 7.8 below.

Responses to all questions of a substantive nature, as well as copies of the questions, will be posted to the NYSDOT web site.

7.7 Protest Procedure

The New York State Department of Transportation (NYSDOT) has established a protest procedure to be utilized when an interested party challenges a Non-Engineering consultant designation by NYSDOT. The complete procedure can be accessed via: <https://www.dot.ny.gov/main/business-center/consultants/general-info>.

7.8 Tentative Schedule of Key Events

NYSDOT will attempt to adhere to the following tentative schedule with regard to progressing this solicitation:

RFP Release Date:	June 24, 2019
Pre-Proposal Webinar	July 2, 2019, 9:30 AM – 11:30 PM (EST)
Question Submittal Deadline:	July 8, 2019, 12:00 PM (EST)
Answers/RFP Announcement #1 Due	July 15, 2019
Proposals Due:	August 7, 2019, 12:00 PM (EST)
Proposal Evaluation	August 2019
Demonstrations/Interviews	September 2019
Recommendation & Designation:	September/October 2019
Contract Finalizing:	September/October 2019
Contract Award:	January 2020

ATTACHMENT 1: DRAFT CONTRACT

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

F. A. NO.: _____

P.I.N.: _____

COMPTROLLER'S CONTRACT NO. C037856

PROJECT: RIGHT OF WAY AND REAL ESTATE IT SYSTEM SERVICES FOR NYSDOT

This Agreement made this _____ day of _____, 2019 pursuant to Section 14 of the Transportation Law, by and between THE PEOPLE OF THE STATE OF NEW YORK (hereinafter referred to as the "STATE") acting by and through the Department of Transportation (hereinafter referred to as "STATE") whose office is at 50 Wolf Road, in the County of Albany, State of New York 12232, and

CONSULTANT FIRM NAME

CONSULTANT FIRM ADDRESS

(hereinafter referred to as "CONSULTANT")

WITNESSETH:

WHEREAS, the STATE desires the CONSULTANT because of its ability and reputation, to perform the services hereinafter mentioned upon the PROJECT which is fully described in SCHEDULE A and the CONSULTANT agrees to provide these services.

NOW, THEREFORE, the parties hereto, for the consideration hereinafter named, do agree as follows:

1 Documents Forming the Agreement

This Agreement entitled 'Right of Way and Real Estate IT System Services' for NYSDOT consists of the following component documents:

- This Agreement, including signature and notary pages and Exhibit A (Consultant Employment Disclosure Form B);
- Appendix A, Appendix A-1, Appendix B, Appendix C, Appendix D and Appendix E;
- Schedule A - Scope of Services (Including EXHIBITS);
- Schedule B: - Deliverables Schedule and Compensation (Including EXHIBITS), also referred to as the "Payment Schedule";
- NYSDOT's Request for Proposals (dated MONTH DD YEAR), as modified, added to the Agreement by reference;
- The Consultant's Proposal, (dated MONTH DD YEAR), added to the Agreement by reference.

2 Order of Precedence

In the event of any inconsistency between or among the provisions and contents of this AGREEMENT, it is agreed that such inconsistency shall be resolved in the following descending order of precedence:

1. APPENDIX A,
2. The provisions required by state and federal law to be inserted in the AGREEMENT as set forth in APPENDIX A-1, APPENDIX B, and APPENDIX C, APPENDIX D and APPENDIX E;
3. This AGREEMENT, including Signature Page, Notary Page and Exhibits;
4. SCHEDULE A – Scope of Services (including Exhibits);
5. SCHEDULE B – Deliverables Schedule and Compensation (including Exhibits);
6. The STATE’s Request for Proposals, as modified and added by reference; and
7. The CONSULTANT’s Proposal (As clarified during the Technical Interview and added by reference.

3 Definitions

As used in any of the documents forming this Agreement, the following terms shall have the following meanings (bold font added here only for emphasis):

Consultant-Owned Software and/or “Proprietary Software” means Software developed and owned by the Consultant or its subcontractors which either pre-exists, or whose development is not funded by this Agreement.

Commissioner means the Commissioner of Transportation of the State of New York or their duly authorized representative.

Developed Software means any and all Software and associated documentation that are specific to the Project Scope of Services and Deliverables developed under this Agreement.

Enhancement shall mean any changes or additions to Software, other than Maintenance Releases, New Versions, or modifications, tailoring and/or customizations resulting from Integration Services that improve features or functions, add new features or functions, or improve performance.

Equipment for Commercial-Off-the-Shelf Software or Consultant-Owned Software, Equipment consists of any computer or computer system on which such software may be used pursuant to the relevant license; for Developed Software, Equipment consists of any computer or computer system.

Error shall mean any error, problem, or defect resulting from: (i) incorrect coding, or (ii) any failure of a deliverable to meet specifications.

FHWA means the Federal Highway Administration, an operating administration of the U.S. Department of Transportation.

Licensed Software means any Consultant-Owned Software and any Third-Party Software provided by the Consultant pursuant to this Agreement.

Government means the U.S. Government acting through FHWA.

Integration Services shall mean the programming and technical support provided by the Consultant to develop modifications to the Software, including services to tailor and customize Software to the Project, as such services may be set forth in the Scope of Services.

Intellectual Property means all tangible and intangible property rights, including, but not limited to copyrights, patents, trademarks, trade secrets and any other form of intellectual property rights covering the source code, any databases, software, inventions, training manuals, content, menu structure, speech or sound files, vocabulary, HTML pages/code, graphics, data, look-and-feel, passwords, passwords, encryptions, phone numbers, domain names, systems design, formulas, methods, or other proprietary information in any form or medium..

Maintenance Release shall mean an error correction, maintenance or emergency release of Software, including any modifications or revisions to Software which correct errors in Software.

New Version shall mean a new release of Software, other than Enhancements, Maintenance Releases or modifications, tailoring and/or customization resulting from Integration Services, or a new option not previously available which add to Software significant new features, functions or capabilities or significant improvements in performance. Such new Release/option shall be deemed a New Version rather than a Maintenance Release only if and so long as Consultant continues to maintain, enhance and market the Software without such new Release/option and generally charges its maintenance clients an additional charge.

Open Source Software shall mean any software obtained under a license that permits unrestricted use, modification, and redistribution in modified or unmodified form. A subset of open source licenses also requires that redistribution (in modified or unmodified form) be accompanied by corresponding source code. Any Open Source Software and the license applicable to it shall be subject to the State's review and approval prior to use.

Payment Schedule means the items, amounts associated therewith and the compensation method and compensation schedule set forth in **Schedule B**.

Piggyback Contract means a Contract let by any department, agency or instrumentality of the United States government, or any department, agency, authority, office, political subdivision or instrumentality of any state or state(s) which is adopted and extended for use by the OGS Commissioner in accordance with the requirements of the State Finance Law.

Project means the provision or development of, testing, evaluation, deployment, maintenance and support of the Consultant-supplied Software and all System requirements hereunder for the New York Department of Transportation, inclusive of (unit price books, technical specifications, all software, services, training, and support) to be provided or developed by Consultant, as more fully described in the Scope of Services, together with the Licensed Software described in this Agreement.

Production System means an automated application or process that is used by NYSDOT to conduct day-to-day business.

Scope of Services means Scope of Service Clarifications, followed by NYSDOT's RFP for C037856 (includes the RFP itself, the RFP Modifications, the written RFP evaluation clarification question requests, the Technical Demonstration instructions and clarification questions, and the Best and Final Offer [BAFO] request), followed by the Consultant's Proposal (includes Technical and Management Proposal, Cost & Administrative Proposal, written RFP evaluation clarification question responses, Technical Demonstration clarification question responses and presentation, and any Consultant's BAFO response).

Software means the computer programs (including any security devices) in object (and, in the case of Developed Software, also source code) form, in whole or part, provided by the Consultant under this Agreement, regardless of media type, including all or any portions of the Software incorporated in another program. Software shall, as appropriate, include Documentation and Maintenance Releases. This includes any software provided by NYSDOT for modification by the Consultant while under this Agreement per this Agreement's Scope of Services.

Software Modification shall mean any products resulting from Integration Services, modification, tailoring, and or customization of Software excluding Maintenance Releases, Enhancements or New Versions, performed to Software by or on behalf of the Consultant for the Project as set forth in the Scope of Services.

Software Documentation means the manuals, installation instructions and other materials which are provided with the Software whether in printed form or otherwise.

Subsystem means an automated application or process that incorporates the capabilities, features, data and/or reporting required of a specific business function or process and that may or may not integrate with other subsystems to serve an enterprise need. For example: General Ledger, Purchasing, Accounts Payable, Accounts Receivable, Inventory Accounting, etc., are all subsystems of an enterprise Finance Information System.

System Documentation means any manuals, reports, instructions and other materials for design specifications, programming specifications operating and maintenance instructions acquired or developed by the Consultant for the Project.

Support Services shall mean the support services provided by the Consultant per the Project's Scope of Services in respect to the Software and may include any support services provided in respect to Maintenance Releases, enhancements and/or new versions made to the Software.

Third-Party Commercial-Off-The-Shelf Software means Software that is ready-made and available for sale, lease, or license to the general public, with functionality and complexity defined by market need and which is not developed by the Consultant or its subcontractors for the Project, but which is acquired commercially and provided by the Consultant.

Third-Party Software means any Software provided by the Consultant as part of this Project which is not Consultant-Owned or Developed Software, including but not limited to, Third-Party Commercial-Off-The-Shelf software or Open Source Software.

User Documentation means manuals, instructions and other materials acquired, provided or developed by the Consultant for the Project per the Scope of Services.

4 Performance of Work

The Consultant shall assume responsibility for the cost and timely accomplishment of all obligations and duties required by this Agreement in an efficient, expeditious and competent manner, whether or not such obligations or duties are performed by the Consultant or its subconsultant(s). The Consultant shall be responsible for acceptable delivery of all subconsultant work under this Agreement.

4.1 Notice to Proceed

Consultant will commence the work of the Project upon NYSDOT's issuance of a Notice to Proceed, but in no event later than 14 work days from the approval of this Agreement by the State Comptroller and, if necessary, by the Federal Highway Administration.

4.2 Consultant Project Management

Consultant shall appoint a Project Manager who will be responsible for the overall management of Consultant's responsibilities hereunder.

4.3 NYSDOT Project Management

The work of the Project shall be performed under the direction and contract administration of NYSDOT and in accordance with the New York State Project Management Methodology, as defined in the New York State Project Management Guidebook. NYSDOT will have a Project Manager serving as the representative of NYSDOT. The Project Manager is the consultant's day-to-day contact for ensuring performance of the work within the Scope of Services and the Payment Schedule; processing payment requisitions; and the initiation and coordination of review of any changes to the Contract Documents. The Project Manager is not the NYSDOT contracting officer, and any amendment to the Contract Documents requires an amended or supplemental agreement signed by the NYSDOT contract officer and any necessary State officials and, if required, the Federal Highway Administration.

4.4 Performance of Scope of Services

Consultant shall perform all work required by and associated with the Scope of Services in this AGREEMENT in an efficient and expeditious manner and in accordance with all terms and conditions of this AGREEMENT. The Consultant shall perform the work in accordance with professional standards and with the diligence and skill expected of a company with extensive experience in the performance of the work of the type described in this AGREEMENT. The consultant shall furnish such personnel and shall procure such materials, machinery, supplies, tools, equipment and other items, technology, and intellectual property as may reasonably be necessary or appropriate to perform the work in accordance with this Agreement.

4.4.1 Scope Changes

NYSDOT reserves the right, unilaterally, to require, by written order, changes by altering, adding to, or deducting from the Scope of Services, such changes to be within the general scope of the Contract. NYSDOT may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance.

4.4.2 Consultant Personnel Changes

Any change of Consultant personnel by the CONSULTANT shall be subject to the prior written approval of the STATE and are subject to NYSDOT's Consultant personnel change process.

4.5 Extra Work

If the consultant believes that any work is or may be beyond the scope of the Agreement (extra work), the consultant shall notify the STATE, in writing, via a Project Change Request, of this fact prior to beginning any of the work. The Project Change Request shall contain all the information required by NYSDOT, including but not limited to the following:

1) a short description of the proposed change, 2) a short description of the proposed solution, and 3) the estimated hours to complete the change. The total cost of the change shall include both labor and material costs. The labor cost shall not exceed an amount calculated by multiplying the number of labor hours by the currently applicable hourly rate for each labor category as defined in the Agreement. The consultant shall provide the appropriate documentation to support all material costs stated in the Project Change Request. Detailed estimates for the Project Change Request may need to be developed through Joint Application Development sessions attended by both the consultant and NYSDOT before such a request for approval for extra work can be considered by the STATE.

No extra work shall be started prior to written authorization from the STATE. The STATE shall be the sole judge as to whether or not such work is, in fact, beyond the scope of this Agreement and constitutes extra work. If the STATE determines that extra work is warranted, and additional funds are needed, a Supplemental Agreement providing for compensation and describing the work authorized shall be issued by the STATE to the Consultant for execution after approvals have been obtained from NYSDOT, the NYS Attorney General office, the NYS Office of the State Comptroller and, if required, the Federal Highway Administration. The STATE shall determine the proper method and scheduling of payments for such approved extra work. Upon approval of extra work, the consultant will deliver the Project Change Request at the agreed-upon cost within reasonably close conformance with projected extra work delivery timeframes. The STATE shall be under no obligation to reimburse the Consultant for any extra work performed without the prescribed notification and authorization.

4.6 Disputed Work

If Consultant is of the opinion that any work ordered by NYSDOT to be done as contract work is extra work and not contract work, or that any order of NYSDOT exceeds the work requirements of this Agreement, Consultant shall promptly, within ten (10) work days of receipt of the order or direction, so notify NYSDOT's Project Manager, in writing, explaining Consultant's contention. Consultant must progress the work as required and ordered. In the meantime, Consultant, if it considers the issue unresolved, shall promptly, within ten (10) work days of receipt of NYSDOT's written decision, notify the Commissioner, in writing with copies to the Project Manager, of its contentions relative to the dispute, indicating the substance of previous communication with the Project Manager on the issue and its rebuttal of the previous findings. The Commissioner or his/her designated representative shall make a finding thereon and notify Consultant of same in writing in a timely manner. If such work is determined by the Commissioner or his/her designee to be extra work pursuant to the provisions of this Article, NYSDOT will initiate a Supplemental Agreement.

If the Commissioner or his/her designated representative determines that the work in question is contract work and not extra work, or that the order complained of is proper, he/she shall again direct Consultant to continue the disputed work, and Consultant must promptly comply. Consultant's right to pursue a dispute under this Article for extra compensation will not be affected in any way by Consultant's complying with the directions of the Commissioner or the Project Manager to proceed with the work, provided Consultant continues to keep and furnish documentation of the extra work claimed.

4.7 Coordination with Other Consultants

As required or directed by NYSDOT, Consultant shall cooperate with, and coordinate its work with, any other consultants that may be involved with the PROJECT.

4.8 Damages and Delays

The Consultant agrees that no charges or claim for damages shall be made by the Consultant for any delays or hindrances from any cause whatsoever during the progress of any portion of the work required by this Agreement. Such delays or hindrances, if any, shall be compensated for by an amendment to the Project Schedule and, as applicable, the Budget, subject to the procedures otherwise applicable herein for changes to the Project Schedule and Budget.

5 Project Deliverables, Compensation, and Payment Schedule

A Schedule of Project Deliverables and Compensation for the entire Project is attached hereto as **Schedule B** (together with applicable sub schedules, supporting documentation, or requirements for such documentation, which may be collectively referred to herein as the "**Payment Schedule**"). Consultant shall maintain, and perform within, such Payment Schedule. If at any time the Payment Schedule is exceeded or likely to be exceeded, Consultant shall immediately inform NYSDOT's designated representative. NYSDOT shall determine whether a modification of the work or Payment Schedule may be made and, if not, whether NYSDOT will seek a modification of this Agreement in accordance with paragraphs 4.4.1 and 4.5, which may require a Supplemental Agreement that requires further reviews and approvals, including by NYSDOT, the NYS Attorney General's office, the NYS Office of the State Comptroller and, if required, the Federal Highway Administration.

6 Project Cost Compensation Methods

Compensation under this Agreement shall be paid in the following manner, as applied to this Project by, within, and according to the Payment Schedule (Schedule B):

6.1 One-Time Costs

A total fixed lump-sum cost for One-Time Costs as set forth and accordingly to the billing milestones identified in Schedule B.

6.2 Annual Maintenance & Support

Annual costs for maintenance and optional maintenance renewals are calculated based on the number of such items called for under this Agreement and the applicable item-based pricing level thereunder, to be paid for according to the schedule set forth in Schedule B.

6.3 Specific Hourly Rates

Item I. Specific Hourly Rates of pay for Contract Year One shown in Schedule B for employees assigned to this PROJECT for the commission of Extra Work (per Article 4.5). The Specific Hourly Rates are not subject to audit; however, the number of hours charged is subject to audit. If any Extra Work is required during Contract Years Two and/or Three, or if any Extra Work is required if the Agreement is extended beyond the Agreement's base three-year term, then all of the Specific Hourly Rates of pay shown in Schedule B may be adjusted annually by the lower of either the percent change for the Producer Price Index – Architectural, Engineering, and Related Services (Series ID: PCU5413--5413--) for the most recent 12-month period as calculated by the U.S. Department of Labor - Bureau of Labor

Statistics, or 2%, subject to current market conditions. If the above Index Series ID is discontinued or becomes unavailable at any time, the STATE reserves the right to implement a comparable Index.

Item II. Actual Direct Non-Salary Costs incurred in fulfilling the terms of this Agreement are subject to audit. For future Extra Work, such costs are to be included in the Agreement via formal Supplemental Agreement. All reimbursement for travel, meals, and lodging shall be reasonably reimbursed, and such reimbursement shall not exceed the prevailing maximum rates established by the State Comptroller.

Item III. Items purchased under this PROJECT shall become the property of the STATE at the completion of the work, or at the option of the STATE, appropriate value shall be established as a credit to the STATE.

7 Payment Process; Record Keeping; Audit

7.1 Payment Requisitions

Consultant shall submit to NYSDOT's representative Project payment requisitions for the work performed by or through Consultant, in accordance with the Payment Schedule (**Schedule B**). Requests to NYSDOT for payment shall contain a complete summary statement of charges and costs and billing invoices for the Project.

7.2 Payment

The STATE shall pay the Consultant in accordance with Article 11-A of the State Finance Law (Prompt Payment Statute), subject to a maximum NYSDOT obligation reflected in the Payment Schedule (**Schedule B**), the availability of funds, the approval of NYSDOT, and audit by the State Comptroller. The maximum aggregate amount payable by the State to the Consultant hereunder for the performance and completion of the work under this Agreement is \$ unless increased by a supplemental agreement.

7.3 Estimated Quantity Contracts

All quantities or ranges of quantities for provision of goods and services under this Agreement are expressly agreed and understood to be estimates or projections. Payments under this estimated quantity contract are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Agreement term. No guarantee of any quantity(ies) is implied or given.

7.4 Periodic Payment

Payment to the Consultant for the One-time Cost portions of the Project will be made for work performed by Consultant upon acceptance by NYSDOT of deliverables in accordance with the payment milestones referenced in **Schedule B**. For recurring costs for specified items, payment to Consultant will be made on a pre-paid annual basis upon approved requisitions for items actually required by NYSDOT during the upcoming year, less any applicable credits. Additional payments for work added to this Agreement may be paid on a lump-sum basis or on a time and materials basis.

7.5 Final Payment

Section 179 of the State Finance Law requires the STATE to make final payment within thirty (30) calendar days after receipt of an invoice that is properly prepared and submitted. The STATE, in accordance with the provisions of the State Finance Law has, determined that the STATE will require a 60-calendar-day audit period for final payments, at which time the 30-calendar-day interest-free period will commence. The Consultant is required to make final payment to all Sub Contractors and Sub Consultants within ten (10) calendar days of receipt of final payment from the STATE.

7.6 Maintenance of Records

The Consultant shall maintain all books, documents, papers, accounting records, and other evidence pertaining to cost, charges, and fees incurred and make such materials available at its office at all reasonable times during the period of the AGREEMENT and for six years from the date of final payment under the AGREEMENT for inspection by NYSDOT or any authorized representative of the STATE. During the course of the Project, and for three (3) years thereafter, Consultant agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Project as the STATE or FHWA may require and to comply with the audit requirements of 49 C.F.R. 18.26, OMB Circular A-128, and any revision or supplement thereto.

7.7 Audit: Completion Procedures

7.7.1 State's Right to Audit

Upon reasonable notice, Consultant shall permit the Commissioner of Transportation, the State Comptroller, or any other duly authorized agent of the State or Federal Government to inspect all books, records, and accounts relating to the Project.

7.7.2 Inspection by Federal Officials

Consultant agrees to permit the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of Consultant and its contractors pertaining to the Project. Consultant agrees to require each third-party contractor to allow the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that contract, and to audit the books, records, and accounts involving that contract as it affects the Project.

7.7.3 Audit Provisions

The application of the audit provisions herein, to fixed-price work, are not for the purposes of price adjustment to such fixed-price work, nor shall Consultant's cost information for such work be required to be reported. The STATE may, however, examine unpriced records related to such work for the purposes of verifying performance.

8 Consultant's Liability; Indemnification

8.1 Consultant's Liability

Consultant shall be responsible for all damage to life and property due to intentional acts, negligent acts, errors or omissions of the Consultant, its sub-contractors, agents, or employees in the performance of its service under this Agreement. Further, it is expressly understood that the Consultant shall indemnify and save harmless the STATE from claims,

suits, actions, damages, and costs of every name and description to the extent resulting from the negligent performance of the services or activities performed by or on behalf of Consultant under this Agreement, and such indemnity shall not be limited by reason of enumeration of any insurance coverage herein provided.

Negligent performance of service, within the meaning of this Article, shall include, in addition to negligence founded upon tort, negligence based upon Consultant's failure to meet professional standards and resulting in obvious or patent errors in the progression of its work. Consultant's responsibility and indemnity shall also include but not be limited to liability resulting from any infringement violation by Consultant of proprietary rights, copyrights, trademarks, or right of privacy arising out of the intellectual property furnished by Consultant under this Agreement, except when attributable to the fault or negligence of the STATE, its officers, employees or agents.

Nothing in this Article or in this Agreement shall create or give to third parties any claim or right of action against Consultant or the STATE beyond such as may legally exist irrespective of this Article or this Agreement.

To the fullest extent permitted by law, the Consultant shall indemnify and save harmless the State, and/or any municipality, public benefit corporation, railroad, and/or public utility whose property or facilities are affected by the work, from suits, claims, actions, damages and costs, of every name and description arising from the work under its contract during its prosecution and until the final acceptance thereof. The Consultant and any assigns, heirs, or successors in interest shall also indemnify and save harmless, to the fullest extent permitted by law, the inspecting engineer or inspector working for the State relative to the project from suits, claims, actions, damages and costs involving personal injury and property damage arising from the Consultant's work under the contract during its prosecution and until the final acceptance thereof. The State may retain such monies from the amount due the Consultant as may be necessary to satisfy any claim for damages recovered against the State, any municipality and/or any public benefit corporation, railroad or public utility whose property or facilities are affected by the work or consultant inspecting engineers or inspectors working for the State relative to the project. The Consultant's obligation under this paragraph shall not be deemed waived by the failure of the State to retain the whole or any part of such monies due the Consultant, nor where such suit, action, damages and/or costs have not been resolved or determined prior to release of any monies to the Consultant under the contract, nor shall such obligation be deemed limited or discharged by the enumeration or procurement of any insurance for liability for damages imposed by law upon the Consultant, Subconsultant or the State, any municipality and/or any public benefit corporation, railroad or public utility whose property or facilities are affected by the work, or for any consultants working for the State. It is understood by the State and the Consultant that the Consultant's Professional Liability/Errors and Omissions policy required in the Article of this Contract entitle "Insurance" shall be utilized for claims involving the Consultant's professional negligence.

The Consultant has the obligation, at its own expense, for the defense of any action or proceeding which may be brought against the parties specified in this Section. This obligation shall include the cost of attorneys' fees, disbursements, costs and other expenses incurred in connection with such action or proceeding. Such obligation to indemnify in the

foregoing paragraph does not extend to those suits, actions, damages and costs of every name that arise out of the sole negligence of the State, or the negligence of any municipality and/or any public benefit corporation, railroad or public utility whose property or facilities are affected by the contract work, or the negligence of any consultants working for the State, their agents or employees, relative to the construction, alteration, or repair or maintenance of a building, highway or structure or appurtenances and appliances thereof including moving, demolition and excavating connected therewith. Notwithstanding the foregoing, the parties being defended by the Consultant may elect to join any action or tender their own defense, at their sole expense and discretion.

8.2 Indemnification

In case an action shall at any time be brought against the State, asserting a allegation or cause of action for which Consultant is putatively liable, the Consultant shall, at its own cost and expense, and without any cost or expense whatever to the STATE, defend such suit and indemnify and save harmless such parties against all costs and expenses thereof, including reasonable attorney fees and expenses, and promptly pay or cause to be paid any final judgment recovered against the STATE; provided, however, that the STATE gives notice to Consultant and thereafter provide all such information as may from time to time be requested by Consultant or its representatives. The STATE shall furnish to Consultant all such information relating to claims made for injuries, deaths, losses, damages, or destruction of the type covered by this Article as Consultant may from time to time request. The provisions of this Article shall not impinge on the right of any of the State to pursue its own defense in any filed or threatened actions.

8.3 Third Party Claims

If a third-party claim causes NYSDOT's quiet enjoyment and use of the Right of Way and Real Estate IT System, including any aspect, functionality or component thereof (hereinafter, the "System"), to be to be seriously endangered or disrupted, and that claim is based on acts or omissions of the Consultant, its subcontractors, or the respective employees of agents of the aforesaid, the Consultant shall: 1) replace such System, without additional charge, by a compatible, functionally equivalent and non-infringing product; 2) modify such System to avoid the infringement; 3) obtain a license for NYSDOT to continue use of such System for the term of this Agreement and pay for any additional reasonable fee required for such license; or, 4) if none of the foregoing alternatives are possible even after the Consultant's best efforts, the Consultant shall refund a pro rata portion of the entire license fee based on five years, according to the schedule set forth below, and discharge NYSDOT from its obligation to pay any further license or other fees under this Agreement.

Schedule of Refund	
Year 1	100%
Year 2	80%
Year 3	60%
Year 4	40%
Year 5	20%

8.4 Copyright and Patent Indemnity

The Consultant shall defend, indemnify and shall hold harmless (including reasonable attorneys' fees) the State, NYSDOT, and any employee or agent thereof (each of the foregoing being hereinafter referred to as the "Indemnified Party") against all liability to third parties (other than liability solely the fault of the Indemnified Party) arising from or attributable to a breach of warranty, negligent or intentional act or omission of the Consultant, its subcontractors, or the respective employees or agents of the aforesaid, or the possession or use by NYSDOT, of the System, including (but not limited to) for the violation of any third party's trade secrets, proprietary information, trademark, copyright, or patent rights in connection with such System. A party requesting such indemnification shall give the Consultant prompt notice of such a claim. Consultant shall conduct the defense in any such third-party action arising as described herein and NYSDOT shall fully cooperate with such defense. This indemnification is limited to the System including modifications thereto made by the Consultant or with the Consultant's knowledge and consent and does not cover third party claims arising from modifications not authorized by or performed with the knowledge of the Consultant or the use of the System in a combination or manner not specified by the Consultant. The provisions of this Article shall not impinge on the right of any of the State to pursue its own defense in any filed or threatened actions.

9 Insurance

The Consultant shall procure, at its own sole cost and expense, and shall maintain in force at all times during the term of this contract, including any extensions or renewals until Contract Final Acceptance, the policies of insurance covering all operations under the contract, whether performed by it or its subconsultants as herein below set forth, written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York and that have an A.M. Best Company rating of A minus or better or approved by the Department. The Department may, at its sole discretion, permit the placement of policies with a non-authorized carrier or carriers upon request by the Consultant, accompanied by the documentation required by 11 NYCRR §27.0 *et seq.*; provided that nothing herein shall be construed to require the Department to accept insurance placed with a non-authorized carrier under any circumstances. The Consultant shall deliver to the Department evidence of such policies as the Department deems necessary to verify that the required insurance is in effect. If policies are changed or canceled, the Consultant shall inform the State immediately. The State will determine whether to issue an order to the Consultant to stop work.

A. Conditions Applicable to Insurance

All policies of insurance required by this agreement must meet the following requirements:

1. Coverage Types and Policy Limits

The types of coverage and policy limits required from the Consultant are specified in subarticle B below. General liability insurance shall apply separately on a per-job or per-project basis.

2. Policy Forms

Except as may be otherwise specifically provided herein or agreed in writing by the Department, policies must be written on an occurrence basis. In the event that occurrence-based coverage is not commercially available, claims-made policy forms will be considered provided that, at minimum, it includes provisions that allow for (a)

reporting circumstances or incidents that may give rise to future claims and (b) an extended reporting period of not less than three (3) years with respect to events that occurred but were not reported during the term of the policy. Insurance policies that remove or restrict blanket contractual liability located in the “insured contract” definition (as stated in Section V, Number 9, Item f in the ISO CGL policy) or that remove or modify the “insured contract” exception to the employers’ liability exclusion so as to limit coverage for claims that arise out of contract work, or that do not cover the additional insured for claims involving injury to employees of the named insured or subcontractors, are not acceptable. Policy forms must be provided to the Department upon request.

3. Certificates of Insurance/Notices

Consultant shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the Commissioner, before commencing any work under this contract. Certificates or transmittal correspondence shall reference NYSDOT Contract Number C037711 and the name of the Consultant in the Subject Line, by email to: Insur.consult.contr@dot.ny.gov. Certificates shall be mailed to:

**Contract Management Bureau, 6th Floor
New York State Department of Transportation
50 Wolf Rd.
Albany, NY 12232**

Unless otherwise agreed, policies shall be written so as to require that the policy will not be (i) canceled, (ii) materially changed or (iii) permitted to expire or lapse for any reason except upon ten (10) days’ prior written notice to the Department by Certified Mail, Return Receipt Requested at the address stated above. In addition, if required by the Department, the Consultant shall deliver to the Department within ten (10) work days of such request a copy of any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete. Certificates of Insurance shall:

- a. Be in a form satisfactory to the Department. The ACORD 25 Certificate must be accompanied by an ACORD 855 “New York Construction Addendum” completed to indicate information about the liability insurance.
- b. Be signed and dated by an authorized representative of the insurance carrier or producer.
- c. Disclose any deductible, self-insured retention, aggregate limit.
- d. Refer to this Contract by number on the face of the certificate.

If at any time during the term of this contract, it shall come to the attention of the Department that required insurance is not in effect or that adequate proof of insurance has not been provided, the Department may, at its option:

- a. Direct the Consultant to suspend work and not re-enter the premises with no additional payment or extension of time due on account thereof, or
- b. May withhold further contract payments in accordance with Partial Payments, Section §109-04 of the Standard Specifications, or
- c. Treat such failure as a breach or default of the contract.

4. Additional Insureds

All insurance policies required by these specifications, except workers' compensation and professional liability shall be endorsed to provide coverage to **"The State of New York/New York State Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, and their agents or employees"** with respect to any claim arising from the Consultant's Work under this contract or as a result of the Consultant's activities. The endorsement shall be effected by endorsement of the applicable policy using ISO form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 or a form(s) that provides equivalent coverage.

5. Primary Coverage

The liability and protective liability insurance policies shall provide primary and non-contributory coverage to the Department for any claim arising from the Consultant's Work under this contract, or as a result of the Consultant's activities.

6. Waiver of Subrogation

As to every type and form of insurance coverage required from the Consultant, there shall be no right of subrogation against **the State of New York/New York State Department of Transportation, its agents or employees**. To the extent that any of Consultant's policies of insurance prohibit such a waiver of subrogation, Consultant shall secure the necessary permission to make this waiver.

7. Policy Renewal/Expiration

At least ten (10) calendar days prior to the expiration of any policy required by this contract, evidence of renewal or replacement policies of insurance with terms no less favorable to the Department than the expiring policies shall be delivered to the Department in the manner required for service of notice in Paragraph A.3. *Certificates of Insurance/Notices* above.

8. Self-Insured Retention/Deductibles

Consultants utilizing self-insurance programs are required to provide a description of the program for Department approval. Collateralized deductible and self-insured retention programs administered by a third party may be approved. Except as may be specifically provided in the Contract Documents of a particular project, the Consultant or third-party-administered insurance deductible shall be limited to the amount of the bid deposit or \$100,000, whichever is less. Security is not required if it is otherwise provided to an administrator for an approved risk management program. The Department will not accept a self-insured retention program without security being posted to assure payment of both the self-insured retention limit and the cost of adjusting claims. The Consultant shall be solely responsible for all claim expense and loss payments within any permitted deductible or self-insured retention. If the Consultant's deductible in a self-administered program exceeds the amount of the bid deposit, the Consultant shall furnish an irrevocable Letter of Credit as collateral to guarantee its obligations. Such Letter of Credit or other collateral as may be approved by Department must be issued by a guarantor or surety with an AM Best Company rating of (A -) or better. If, at any time

during the term of this agreement, the Department, in its sole discretion, determines that the Consultant is not paying its deductible, it may require the Consultant to collateralize all or any part of the deductible or self-insured retention on any or all policies of insurance or, upon failure to promptly do so, the same may be withheld from payments due the Consultant.

9. Waiver of Indemnities

The Consultant waives any right of action it and/or its insurance carrier might have against the Department (including its employees, officers, commissioners, or agents) for any loss that is covered by a policy of insurance that is required by this contract. The Consultant waives any right of action it and/or its insurance carrier might have against the Department (including its employees, officers, commissioners, or agents) for any loss, whether or not such loss is insured.

10. Subconsultant's Liability Insurance.

In the event that any portion of the work described in this contract is performed by an approved subconsultant, the insurance requirements of this Article shall be incorporated into the subcontract agreement. Subconsultant insurance requirements shall include the requirements for Workers' Compensation, Commercial General Liability, and, if applicable, Commercial Auto and/or Professional Liability. Excess or umbrella insurance is not required for subconsultants. Consultant shall require that Certificates of Insurance, meeting the requirements of the Department are provided to the Department documenting the insurance coverage for each and every subconsultant employed by them to do work under this contract.

B. Insurance Requirements

The types of insurance and minimum policy limits shall be as follows:

1. Workers' Compensation and Disability Insurance

As required by State Finance Law §142, the Consultant shall maintain in force workers' compensation insurance upon forms required by or acceptable to the Workers Compensation Board for all of Consultant's employees. Consultant shall also maintain disability insurance as required by the Disability Benefits Law of the State of New York.

2. Commercial General Liability Insurance

The Consultant shall maintain an occurrence form commercial general liability policy or policies insuring against liability arising from premises (including loss of use thereof), personal injury or death, advertising injury, liability insured under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the premises or occasioned by reason of the operations of Consultant. Such coverage shall be written on an ISO occurrence form (ISO Form CG 00 01 12 07 or a policy form providing equivalent coverage) in an amount of not less than \$1,000,000.00 per occurrence and not less than \$2,000,000.00 aggregate. Unless otherwise provided, the policy or policies of insurance providing the liability coverage shall include:

- a. Coverage for contractual liability assumed by the Consultant insured under an insured contract (including the tort liability of another assumed in a business contract).

- b. All insurance policies required by these specifications except workers' compensation and professional liability shall be endorsed to provide coverage to **“the State of New York/New York State Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, or any consultant inspecting engineer or inspector working for or on the project, and their agents or employees”** using ISO form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 or a policy form or forms providing equivalent coverage.
- c. Products-Completed Operations Coverage, as provided in the General Liability Policy, or in certain instances through ISO form CG 26 11 09 99 or suitable equivalent.
- d. Where contract work will be performed by unregistered off-road equipment, Consultant shall provide documentation of a blanket Pollution Liability policy, or an endorsement to cover short-term pollution events, ISO form CG 04 33 10 01 or equivalent.
- e. Coverage for claims for bodily injury asserted by an employee of an additional insured and any Employer Liability Exclusion which may otherwise operate to exclude such coverage shall be voided in this respect.
- f. Explosion, Collapse and Underground Hazards coverage (“XCU”) (for contracts that call for the performance of excavating, underground work, and/or the use of blasting equipment).

3. Commercial Automobile Insurance including liability and required coverage for New York

In the event that automobiles are used in connection with Consultant's business or operations with the Department, the Consultant shall maintain a commercial or other automobile policy or policies insuring against liability for bodily injury, death, or damage to property and other mandatory coverages, relating to the use, operation, loading or unloading of any of Consultant's automobiles (including owned, hired and non-owned vehicles) on and around the project. This may be ISO form CA 00 01 10 01, CA 00 01 01 87 or a policy form providing equivalent coverage along with mandatory New York endorsements. Coverage shall be in an amount of not less than \$1,000,000 each accident.

4. Umbrella or Excess Liability Insurance

The Consultant shall maintain an occurrence form umbrella liability policy or policies insuring against liability arising from premises (including loss of use thereof), operations, independent Consultants, products-completed operations, personal injury and advertising injury, and liability insured under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the premises or occasioned by reason of the operations of Consultant or arising from automobile liability as described above. Such coverage shall be written on an ISO occurrence form CU 00 01 12 07 or a policy form providing equivalent coverage. In the event that umbrella coverage is unavailable, equivalent excess coverage may be substituted. The minimum required limits for the umbrella/excess coverage shall be sufficient to provide a total of not less than \$5,000,000 per occurrence/aggregate.

5. Consultant's Risks

The Consultant shall be responsible for obtaining any insurance it deems necessary to cover its own risks, including without limitation: (a) business interruption, such as gross earnings, extra expense, or similar coverage, (b) personal property, and/or (c) automobile physical damage and/or theft. In no event shall the Department be liable for any damage to, or loss of, personal property, or damage to, or loss of, an automobile that is covered by a policy of insurance that is required by this agreement, even if such loss is caused by the negligence of the Department.

10 Intellectual Property Rights to Licensed Software.

Intellectual property rights to Software other than that governed by Article 11 hereof are as follows:

10.1 Third-Party Software

Third-Party Software utilized under this project will be provided on a royalty-free basis to NYSDOT with, as applicable, such other license terms as negotiated between the Consultant and the third-party or for Commercial-Off-The-Shelf (COTS) software with such terms as provided under the relevant shrink-wrap license. Should any third-party software be utilized for the performance of the Scope of Services identified in this Agreement, the Consultant shall warrant such third-party products.

10.2 Consultant-Owned Software

This Software is provided by Consultant to NYSDOT, in accordance with the following terms:

1. Consultant grants a royalty-free, perpetual, transferable, nonexclusive and irrevocable license for all Intellectual Property related to the Licensed Consultant-owned Software for authorized users of the System (including entities outside of NYSDOT).
2. Such Software licenses shall include in their meaning: 1) any Maintenance Releases, enhancements or New Versions of such Software developed by Consultant or its subcontractors during the term of this Agreement within the Scope of Services or otherwise provided by Consultant or its subcontractors to the System and Enhancements related thereto; and 2) all materials, including but not limited to training materials, documentation, and technical information provided to NYSDOT in written form and for use in connection with such Software.
3. Consultant warrants that it has full power and authority to grant the rights granted by this sub-article to NYSDOT with respect to such Software without the consent of any other person and that neither the performance of services by Consultant nor the license to and use by NYSDOT of the Software, Software Modification, and Software documentation (including the copying and modifying thereof, exclusive of modifications not made by Consultant) will in any way constitute an infringement or violation of any copyright, trade secret, trademark, patent, invention, proprietary information, non-disclosure, contract or any other rights of any third party.

4. Consultant warrants such Software, Software Modification, its license as described herein, and the performance by Consultant of services, are in compliance with all applicable laws, rules and regulations.

11 Intellectual Property Developed Under This Agreement

Rights to intellectual property developed under this Agreement shall be allocated and owned in accordance with the following:

11.1 Federal Law

The applicable provisions of Federal Law and regulation provide for the non-Federal parties of an agreement to retain all intellectual property rights developed under this Agreement, subject further to the provisions defining, identifying, allocating, or restricting such rights otherwise set forth herein.

11.2 Identification of Intellectual Property

Consultant is responsible for identifying and segregating, in advance, intellectual property that was or will be developed by Consultant or its subcontractors under this Agreement, solely with non-federal funding.

11.3 Trade Secrets

The parties shall not publicly disclose information they obtain as a result of this Agreement where such information is marked and identified as proprietary or confidential, and which consists of information such as trade secrets or commercial or financial information that is privileged or confidential within the meaning of ' 552(b)(4) of Title 5, U.S.C.

11.4 FHWA License

Under the FHWA Grant Agreement, the FHWA has reserved a royalty-free, perpetual, transferable, nonexclusive, and irrevocable license to reproduce, publish, modify, or otherwise use in any media which exists currently or in the future, and to authorize others to use any such copyrightable work produced under this Agreement with Federal funds, for Federal Government purposes.

11.5 Patents

Rights to inventions made under this Agreement shall be determined in accordance with 37 C.F.R. Part 401. The standard patent rights clause at 37 C.F.R. Section 401.14, as modified below, is hereby incorporated by reference:

- (i) The terms "to be performed by a small business firm or domestic nonprofit organization" shall be deleted from paragraph (g)(1) of the clause;
- (ii) Paragraphs (g)(2) and (g)(3) of the clause shall be deleted; and
- (iii) Paragraph (1) of the clause, titled "Communications" shall read as follows:
Communications. All notifications required by this clause shall be submitted to the FHWA Division Office.

11.6 (Reserved) Ownership.

11.7 Backups

Consultant shall maintain weekly backups of source code developed, content, and files free from passwords, encryption, or malicious or time-triggered code, and make such backups available upon NYSDOT request.

12 Escrow and Modification of Source Code

Consultant shall place a copy of the source codes of the Consultant-Owned Software and any proprietary or custom-developed software (for the Project) -- or subcontractor-Owned Software into escrow with a licensed escrow agent subject to approval by NYSDOT. NYSDOT approval shall not be unreasonably withheld.

12.1 Delivery of Developed Software

All source and object codes for the Developed Software, i.e., all software custom developed for any System application, shall be provided to NYSDOT during System Implementation to support the maintenance of the System. This will include the software, documentation of the customization, and training materials for the maintenance of the customized software.

13 Training, Support and Maintenance

Consultant shall offer training in the use and implementation of the System and any COTS, Developed or Consultant-Owned Software, to NYSDOT staff, consultant, and other structure owners, including but not limited to municipalities, state and local authorities, commissions, and railroads that will be using the System, in accordance with the RFP and any other part of this Agreement.

13.1 Scope and Duration of Consultant Maintenance and Support of Proprietary, Developed, and/or Licensed Third-Party Software and Systems

Following initial installation and implementation of the proprietary, developed, or licensed third-party software and related systems involved in the project underlying this Agreement, Consultant shall provide ongoing maintenance and support during the term of this Agreement for such software and systems. Consultant shall, at a minimum, provide NYSDOT with the same level of maintenance and support for Consultant's proprietary, developed, and/or licensed software that Consultant provides to other institutional clients and customers.

13.1.1 Terms and Conditions of Maintenance

The maintenance to be provided by Consultant under §13.1 shall include, but not be limited to, providing new releases or updates if issued, and/or patches or bypasses, to address any known problem, i.e., any substantial deviation of unmodified software or systems from their then applicable specifications. Consultant shall provide access to the current version of such software and systems. Consultant's obligation to provide ongoing maintenance shall be limited to the then current version of such software and/or systems, and the immediately preceding version of same for a period of twelve (12) months after it is first superseded. Subject to such additional terms and conditions as may be set forth in Requirements of the RFP, and any other part of this Agreement, Consultant shall, at a minimum, provide NYSDOT with the same level of maintenance for Consultant's proprietary, developed, and/or licensed software that Consultant provides to other institutional clients and customers.

13.2 Scope and Duration of Consultant Support for NYSDOT Usage of Proprietary, Developed, and/or Licensed Third-Party Software

The Consultant shall provide technical support during NYSDOT's installation and implementation of the Developed or Consultant-Owned Software and Systems as set forth in Requirements of the RFP, and any other part of this Agreement. Following the initial installation and implementation of the proprietary, developed, or licensed third-party software and related systems involved in the project underlying this Agreement, Consultant shall provide ongoing technical support during the term of this Agreement for NYSDOT usage of such software and systems, which shall cover the software and systems, be of the scope and duration, include the types of support, and be conducted in accordance with the requirements set forth in Requirements of the RFP and any other part of this Agreement.

13.2.1 Terms and Conditions of Support

- (a) Subject to such different or additional terms and conditions as may be set forth in Requirements of the RFP, and any other part of this Agreement, Consultant shall, at a minimum, provide support through a toll-free "800" telephone number connection to Consultant's technical support staff, and through an Internet website through which NYSDOT staff may contact Consultant's technical support staff, at least during the business hours of 7:30 am to 5:00 pm Eastern Standard Time, Monday through Friday, excluding state holidays, in order to present inquiries and/or requests for support and technical assistance, and to obtain such assistance.
- (b) In accordance with the provisions of the Requirements of the RFP, and any other part of this Agreement providing NYSDOT with access to the current version of the proprietary, developed, or licensed third-party software and related systems involved in the project underlying this Agreement, Consultant's obligation to provide ongoing support shall be limited to the then current version of such software and/or systems, and the immediately preceding version of same, for a period of twelve (12) months after it is first superseded.

14 System Acceptance

If NYSDOT determines that the System has not successfully completed the Project requirements of the system acceptance during the System Implementation, NYSDOT shall promptly notify Consultant, in writing (hereinafter referred to as "notice of failure"), and shall specify with as much detail as possible in which respects the System does not perform properly. The Consultant shall respond within ten (10) business days with an action plan and schedule to address all issues related to the failure(s). NYSDOT may approve, require changes to, or reject the plan. If NYSDOT rejects the action plan provided by the Consultant in response to the notice of failure, NYSDOT may determine that such rejection means that the Consultant is in material default under this Agreement for the purposes of the default and termination provisions of this Agreement or may, at its sole discretion, afford the Consultant with additional opportunity to cure the default.

14.1 Repeated Failure Constituting Material Breach

If the System fails to perform properly in accordance with the system acceptance for a second time, NYSDOT may determine that such failure constitutes a material default under

this Agreement for the purposes of the default and termination provisions of this Agreement or may afford the Consultant with additional opportunity to cure the default.

14.2 Correction Costs

The Consultant's correction of the product deficiency shall be at no additional cost to NYSDOT, unless the system acceptance failure(s) are the results of Disputed Work within the meaning of Article 4.6 of this Agreement (in which case the remedy within such section applies). The Consultant shall, however, bear sole responsibility for the costs of correction of product deficiencies revealed by such testing, including all previously unanticipated and unscheduled time and effort required for the development of corrective measures.

15 Warranty Provisions

Consultant warrants that, for 18 months from the acceptance of the system per the successful completion of the system acceptance, all System Software and Systems, including all Service Components, Developed Software, and Consultant-Owned Software furnished hereunder, both as to each individual element and for the overall System, shall be free from significant programming and operational errors which shall prevent it from operating in conformity with the standards set forth in this Agreement.

If NYSDOT notifies Consultant that any Software, System, or Service fails to conform to the requirements of this agreement during the Warranty period, Consultant shall remedy such failure at no cost to NYSDOT.

15.1 Exclusive Warranty for Third-Party Software

Consultant's warranties do not apply to Third-Party Software or Third-Party Commercial-Off-The-Shelf Software. Third-Party Software or Third-Party Commercial-Off-The-Shelf Software manufacturer and any Third-Party warranties shall, to the extent permissible, be passed through to NYSDOT. However, Consultant shall provide a work-around solution to any Third-Party Software, to allow the system to function to the highest extent reasonably possible within a reasonable time frame. Should any third-party software be utilized for the performance of the Scope of Services identified in this Agreement, the Consultant shall warrant such third-party products.

15.2 Correction of Defects.

If at any time during the Warranty Period Consultant or NYSDOT discovers one or more defects or errors in the Software and Systems or any other respect in which such Software and Systems fail to conform to the provision of any warranty contained in the Agreement, Consultant shall, entirely at its own expense, correct such defect, error, or non-conformity by, among other things, supplying NYSDOT with such corrective codes and making such additions, modifications, or adjustments to the Software as may be necessary to keep all Software in operating order.

15.3 Warranty Disclaimer

Consultant disclaims any and all other promises, representations, or warranties not expressly provided for elsewhere in this Agreement, and its attachments and exhibits, to the maximum extent allowable by law, with respect to the software and systems, either express or implied, including but not limited to the implied warranties of merchantability and fitness for a

specific purpose, and any warranties that the operation of the software will be uninterrupted or error free.

16 Suspension and Termination; Bankruptcy

16.1 Suspension or Termination for Convenience of NYSDOT

NYSDOT may, without cause and for its convenience, upon not less than seven (7) days' written notice to Consultant, suspend Consultant's performance under this Agreement or terminate this Agreement.

16.1.1 - Contracts between Consultant and its subconsultants shall provide for their suspension or termination, without cause and for the convenience of Consultant, upon not less than seven (7) days' written notice by Consultant to its contractor, and for closeout compensation in such event for work in progress and materials on order prior to termination, work performed, materials delivered, but not lost profit on the balance of contract work. NYSDOT may, without cause and for its convenience, upon not less than seven (7) days' written notice to Consultant, require Consultant to suspend or terminate any or all of its contracts pursuant to such provisions.

16.2 Suspension or Termination for Cause

NYSDOT may for cause and, unless in NYSDOT's judgment the public interest requires earlier action, upon not less than seven (7) days' written notice to Consultant, suspend Consultant's performance under this Agreement or terminate this Agreement if Consultant breaches or is in default of any obligation hereunder, including those instances enumerated in the Escrow Agreement, which default is incapable of cure or which, being capable of cure, has not been cured within twenty (20) days after receipt of notice of such default from NYSDOT or within such additional cure period as NYSDOT may authorize. Consultant shall also be deemed in default if: 1) it fails to make reasonable progress as defined by NYSDOT on the Services Project in accordance with this Agreement; 2) the System does not perform in accordance with the requirements of this Agreement, notwithstanding Consultant's remedial or maintenance efforts; or 3) other material violation of this Agreement that significantly endangers substantial performance of the Project.

16.2.1 - In the event of the termination of this Agreement for failure of a Project element or component, or in the performance of the Software or Services during the Warranty Period as stated in Article 15.1 above, NYSDOT may: 1) recover from Consultant all costs, fees, and expenses incurred by NYSDOT to remedy such failure, including for elements which are rendered substantially useless as a result of such failure, up to the amount paid to Consultant for the Project element that has so failed; and 2) if such failure is integral to the entire Software and Systems, all money paid for the Software and System, as well as associated services.

16.2.2 - In the event of the failure of a Project element or component, or in the performance of the Software, Systems, or Services during the Warranty Period as stated in Article 15.1 above, NYSDOT may suspend Consultant's performance, in whole or in part, without terminating this Agreement, and contractually or otherwise remedy the failure at costs to be charged to Consultant or offset against Consultant's compensation under this Agreement. In the event of such suspension or other remedy, Consultant's

aggregate liability shall not exceed two hundred percent (200%) of the amount stated in Article 16.2.1 above.

16.2.3 - If a termination is brought about for the convenience of the STATE and not as a result of unsatisfactory performance on the part of the Consultant, final payment shall be made based on the percentage of work satisfactorily completed by the Consultant, as determined by the STATE.

16.2.4 - The New York State Department of Transportation reserves the right to terminate this contract in the event it is found that the certification filed by the Contractor in accordance with the requirements contained in State Finance Law Sections 139j & 139k was intentionally false or intentionally incomplete. Upon such finding, the New York State Department of Transportation may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the contract.

16.3 Delivery of Documentation

In the event of suspension or termination pursuant to this Article, Consultant shall secure for and deliver to NYSDOT all documentation relating to the contracts terminated thereby, including but not limited to any designs, plans or specifications, contract and subcontract documents, tapes or discs, or software.

16.4 Impact on Project Schedule

In the event such suspension or termination affects project duration, the impact will be reflected in the project schedule.

16.5 Suspension or Termination Payments

In general, suspension of performance or termination of any financial assistance under this Agreement will not invalidate the State's obligation to reimburse Consultant for costs and expenses properly incurred by Consultant and concurred in by the State before the suspension or termination date, to the extent those obligations cannot be canceled. However, if the State determines that Consultant has willfully misused State or Federal assistance funds by the gross negligence or willful failure to make adequate progress; make reasonable use of the Project property, facilities, or equipment; or adhere to the terms of this Agreement, the State reserves the right to require Consultant to refund the entire amount of State funding received by Consultant under this Agreement.

16.6 Bankruptcy

Should a petition for bankruptcy be filed by Consultant pursuant to Title 11 USC or its successor statute:

- a) Consultant shall comply with all requirements set forth in 11 USC 365 or any successor statute regarding the assumption, assignment, or rejection of this Agreement. Consultant shall either cure all defaults, compensate actual losses, give adequate assurance of future performance and fulfill all obligations pursuant to 11 USC 365(b)(1) or other applicable law and assume the obligation; or shall reject this Agreement as provided by Bankruptcy Law. If this Agreement is rejected, possession of or rights to contract property, including subcontracts required for the performance

of the Project (which is in the public interest), equipment, and deliverables, shall be immediately returned to or transferred and assigned to the State. No sale or assignment of this Agreement shall be permitted without the consent of the State or without compliance with the assumption and assignment provisions under Bankruptcy Law pursuant to 11 USC 365 or its successor statute.

- b) The Debtor may not assume or assign this Agreement if it has been terminated pursuant to the terms hereof prior to the filing for a petition for relief in bankruptcy.

16.7 Reserved

16.8 Consultant Warranties Surviving Suspension, Termination, or Bankruptcy

Following a suspension or termination of this Agreement, and/or a Chapter 11 reorganization bankruptcy of Consultant, Consultant's obligations to have provided properly performing software and/or systems as required under this Agreement, and the warranties provided by Consultant to NYSDOT under this Agreement, shall continue in effect for the remainder of the term of this Agreement, without regard to such suspension or termination, and to the fullest extent allowed by federal bankruptcy statutes and case law. Consultant shall not avoid responsibility for failure to provide properly performing software and/or systems as required under this Agreement by asserting that the suspension or termination of this Agreement, or Consultant's Chapter 11 bankruptcy, has voided the obligations of Consultant's contractual warranties under this Agreement.

16.9 Limitation of Liability/Exclusion of Damages

Except for Licensee's breach of confidentiality obligations hereunder, in no event shall either party be liable to the other for any incidental, indirect, special, consequential or punitive damages related to the software that is not expressly provided for elsewhere in this Agreement and its attachments and exhibits, including without limitation lost profits, costs of delay, any failure of delivery, business interruption, costs of lost or damaged data or documentation, or liabilities to third parties arising from the software's use, even if the party from which such damages are sought has been advised of the possibility of such damages. Consultant remains liable, without monetary limitation, for direct damages for personal injury, death, damage to real property of tangible personal property or intellectual property attributable to the negligence or other tort of the Consultant, its officers, employees or agents.

17 Reserved (Title to Equipment)

18 Independent Contractors

18.1 Purpose

The purpose of this Agreement is to promote economic and technical cooperation and efficiency among the Government, State, Consultant, and private entities in pursuing mutually advantageous goals. The relationship of the parties to the Agreement is that of independent contractors and not joint venturers, partners, or agents.

18.2 Officer or Employee of State

Consultant agrees that it will neither hold itself out as nor claim to be an officer or employee of the State and that it will not, by reason hereof, make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the State, including but not limited to Worker's Compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

19 Taxes

The following paragraph 60 of General Specifications by the New York State Office of General Services applies:

19.1 Tax Provisions

Purchases made by the State of New York are not subject to State or Local taxes or Federal Excise taxes. To satisfy the requirements of the New York State sales tax, either the purchase order issued by an agency or institution of New York State for supplies or equipment, or the voucher forwarded to authorize payment for such supplies and equipment, will be sufficient evidence that the sale by a contractor or Consultant was made to the State of New York, an exempt organization under Section 1116(a)(1) of the Tax Law. Exemption certificates for Federal Excise taxes will be furnished upon request by the Office of General Services, Standards and Purchase. No person, firm or corporation is, however, exempt from paying New York State Truck Mileage and Unemployment Insurance or Federal Social Security Taxes.

The address of the Office of General Services, Standards and Purchases is:

Tower Building
38th Floor
Empire State Plaza
Albany, New York 12242

In lieu of NYSDOT furnishing an exemption certificate for excise taxes, Consultant is advised that New York Registration Number 14740026K covers tax-free transactions under the Internal Revenue Code.

20 Entire Agreement

This Agreement, together with the Appendices and Exhibits hereto, constitutes the entire agreement between the parties with respect to the subject matter covered, and all prior representations or agreements have been merged into this document and superseded by it.

21 Amendments

Amendments to this Agreement, and amended or Supplemental Exhibits, may be made only in writing, signed by both parties and specifically referred to as an amendment to this Agreement or Supplemental Exhibit.

22 Required Clauses

Attached hereto and made part of this Agreement, as if set forth fully herein as Appendix A, are the standard clauses for all New York State contracts.

23 Executory Clause

It is understood by and between the parties hereto that this Agreement shall be deemed executory only to the extent that moneys available to the State, and no liability on account thereof, shall be incurred by the State beyond moneys available for the purposes hereof.

24 Effective Date

This Agreement takes effect upon final approval of the NYS Office of the State Comptroller.

25 Successors and Assigns

All the covenants and obligations of the parties hereunder shall bind their successors and assigns, whether or not expressly assumed by such successors and assigns.

26 Interpretation

All Article headings utilized in this Agreement are for convenience only and shall not affect the construction hereof. All Appendices attached hereto are integral parts of this Agreement, and the provisions set forth therein shall bind the parties hereto to the same extent as if such provision had been set forth in its entirety in the main body of this Agreement. Nothing expressed or implied herein shall give, or be construed to give, any person, firm, or corporation, other than the State or Consultant, any legal or equitable right, remedy, or claim under or in respect of this Agreement. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally. Any supplement or amendment to this Agreement shall be in writing.

27 Severability

If any part of this Agreement is determined to be invalid, illegal, or unenforceable, such determination shall not affect the validity, legality, or enforceability of any other part of this Agreement, and the remaining parts of this Agreement shall be enforced as if such invalid, illegal, or unenforceable part were not contained herein.

28 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be an original.

29 Term of Agreement

The Consultant agrees to complete all work under this Agreement, as required by this Agreement, within a 60-month base term, which shall commence upon final approval by the NYS Office of the State Comptroller and end **60 months thereafter.**

30 Assignment or Transfer of Agreement

30.1 Consent Required

As required by the State Finance Law, Section 138, Consultant shall not assign, transfer, convey, sublet, or otherwise dispose of this Agreement or its right, title, or interest therein, or its power to execute such Agreement, to any other person, company, or corporation, without the previous consent, in writing, of NYSDOT.

30.2 Violation

If this restriction is violated, NYSDOT may revoke and annul the Agreement and, in that event, the State shall be relieved from any and all liability and obligations thereunder to the person, company, or corporation to whom the Consultant shall assign, transfer, convey,

sublet, or otherwise dispose of the Agreement, and such transferee shall forfeit and lose all moneys therefore assigned under said Agreement.

31 Certification Required by 49 CFR, Part 29

The signatory to this Agreement, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership):

- 1) Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- 2) Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three years;
- 3) Does not have a proposed debarment pending;
- 4) Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

32 Certification for Federal-Aid Contracts

The prospective participant certifies, by signing this Agreement 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 any Federal 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 extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federal appropriate funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal 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.

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 this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees, by submitting his or her bid or proposal, that he or she shall require that the language of this certification be included in all lower tier subcontracts which exceed \$100,000 and that all such sub-recipients certify and disclose accordingly.

33 Application of Federal, State, and Local Laws and Regulations

To achieve compliance with changing Federal requirements, Consultant agrees to include in all its subcontracts, and shall require its subcontractors to further contractually provide specific notice, that Federal and State requirements may change and that the changed requirements will apply to the Project as required.

34 Subawards to Debarred Parties

Consultant acknowledges that it must not make any award, or permit award of any contract or subcontract at any tier for work covered by this Agreement, to any party which is debarred or suspended or otherwise excluded from participation in Federal assistance programs under E.O. 12549, "Debarment and Suspension".

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

The Consultant also shall require that the language of this certification be included in all subcontract and lower tier subcontracts which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

35 Governing Law

The parties hereto agree that this Agreement shall be governed by the Laws of the State of New York.

36 Security and Confidentiality of Information

Information received as part of this contract shall be considered Confidential Information. The Consultant warrants that it will take the appropriate steps as to its personnel, agents, officers, and any Subcontractors/Subconsultants regarding the obligations arising under this clause to ensure such confidentiality. The Consultant shall have written policies and/or business procedures in place which will protect Confidential Information from unauthorized disclosure, use, access, loss, alteration, or destruction. The Consultant may disclose to other parties, as authorized by the NYSDOT Project Manager, or as described in the scope of services, only the information necessary to perform services under this contract. However, the Consultant, under no circumstance, shall communicate with the public or news media without prior authorization from the State's designee. Neither shall the Consultant disclose information deemed confidential by the State nor disclose any other information obtained or developed in the performance of services under this agreement without the written authorization of the State. This warranty shall survive termination of this Contract.

The Consultant shall comply with the provisions of the New York State Information Security Breach and Notification Act, including General Business Law Section 889-aa and State Technology Law Section 208 as enacted by such Act or subsequently amended. In the event of an information security breach resulting in the unauthorized disclosure of personal information, Consultant shall be liable for the costs associated with such breach if caused by Consultant's negligent or willful acts or omissions, or the negligent or willful acts or omissions of the Consultant's agents, officers, employees, or Subconsultants.

36.1 Non-Disclosure or Confidentiality Agreements

Consultant shall agree to execute and be bound by any non-disclosure or confidentiality agreements that NYSDOT or any other agency, consortia, corporation, or other entity which requires such non-disclosure or confidentiality agreement to be executed before data, software, code, or other information shall be provided to the System. The Consultant's acceptance and execution of such agreements shall not be unreasonably withheld.

37 Responsibility of the Consultant

- (a) The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all services furnished by the CONSULTANT under this contract. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its services. However, the STATE may in certain circumstances, provide compensation for such work.
- (b) Neither the STATE'S review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the CONSULTANT shall be and remain liable to the STATE in accordance with applicable law for all damages to the STATE caused by the CONSULTANT'S negligent performance or breach of contract of any of the services furnished under this contract.
- (c) The rights and remedies of the STATE provided for under this contract are in addition to any other rights and remedies provided by law.
- (d) If the CONSULTANT is comprised of more than one legal entity or any group of partners or joint venturers associated for the purposes of undertaking this agreement, each such entity acknowledges and hereby affirmatively represents and agrees that each has the power to bind the CONSULTANT and each of the others hereunder; and as such, each acts both as principal and agent of the CONSULTANT and of each of the others hereunder. Each further acknowledges and agrees that all such entities, partners or joint venturers associated for the purposes of undertaking this agreement shall be jointly and severally liable to third parties, including but not limited to the STATE, for the acts or omissions of the CONSULTANT or any other entity, partner or joint venturer hereunder.
- (e) If the CONSULTANT is comprised of more than one legal entity or any group of partners or joint venturers associated for the purposes of undertaking this agreement, each such entity acknowledges and hereby affirmatively represents and agrees that the respective rights, duties and liabilities of each hereunder shall be governed by the laws of the State of New York, including but not limited to the New York Partnership Law.

38 Compliance with Consultant Disclosure Laws

The Consultant shall timely, accurately, and properly comply with the reporting requirements of State Finance Law Subdivision 17 of Section 8 and Subdivision 14 of Section 163, as amended by Chapter 10 of the Laws of 2006, by submitting the New York State Office of the Comptroller's "Form A - State Consultant Services – Contractor's Planned Employment From Contract Start Date Through the End of the Contract Term" and "Form B - State Consultant Services – Contractor's Annual Employment Report" (Exhibit A, available through the NYSDOT website under Consultant Contract Reporting Requirements at: <https://www.dot.ny.gov/main/business-center/consultants/forms-publications-and-instructions>).

Annual employment reports (exhibit A) should be submitted to the following addresses. It is recommended, however, that consultants check the agency websites annually to confirm the addresses.

By mail:

NYS Office of the State Comptroller

Bureau of Contracts
110 State Street, 11th Floor
Albany, N. Y. 12236
Attn: Consultant Reporting

NYS Department of Civil Service

Alfred E. Smith Building
Albany, N. Y. 12239
Attn: Chapter 10

NYS Department of Transportation:

Reports that are submitted to the NYS Department of Transportation must be submitted electronically, preferably as a Word, Excel or pdf file via email to: consultantdisclosure@dot.ny.gov.

39 Contract Migration

In the event the Consultant is awarded a NYS Centralized Contract for the same products or services, NYSDOT shall be permitted to migrate to that Centralized Contract effective with its commencement date. Such migration shall not operate to diminish, alter, or eliminate any right that NYSDOT otherwise had under the terms and conditions of this Agreement.

39.1 Extension of Use (Piggybacking)

Any Contract resulting from this bid solicitation may be extended to additional State or governmental jurisdictions or authority upon mutual written agreement between New York State (the lead contracting State) and the Consultant. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in any resultant contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

40 Notices

All notices permitted or required under this agreement hereunder shall be in writing and shall be transmitted either:

- (a) Via certified or registered United States mail, return receipt requested
- (b) By facsimile transmission
- (c) By personal delivery
- (d) By expedited delivery service
- (e) By e-mail

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

For the New York State Department of Transportation:

Contact Person's Name: Matt Bromirski
Title: Deputy Assistant Commissioner
Address: NYSDOT Contract Management Bureau, 50 Wolf Rd, 6th Fl.,
Albany, NY 12232
Telephone Number: 518-457-2600
Facsimile Number: 518-457-2875
E-Mail Address: Matt.Bromirski@dot.ny.gov

For the Consultant:

Contact Person's Name:
Title:
Address:
Telephone Number:
Facsimile Number:
E-Mail Address:

Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or e-mail, upon receipt.

The parties may, from time to time, specify any new or different address in the United States as their address for purposes of receiving notice under this Agreement by giving fifteen (15) days' written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purpose of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems, and/or for dispute resolution.

41 Reserved

42 Title VI Assurance

During the performance of this contract, the consultant or contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

42.1 Compliance with Regulations

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

42.2 Nondiscrimination

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

42.3 Solicitations for Subcontractors, Including Procurements of Materials and Equipment

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

42.4 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 NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.

42.5 Sanctions for Noncompliance

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

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

42.6 Incorporation of Provisions

The contractor shall include the provisions of paragraphs 42.1 through 42.6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

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

43 Vendor Responsibility

The Department of Transportation has undertaken an affirmative review of the proposed consultant's responsibility in accordance with the applicable standards outlined in The Office of the State Comptroller's 'Guidelines to Financial Operations', and based upon such review, reasonable assurance that the proposed contractor is responsible has been determined.

43.1 General Responsibility

The Consultant shall, at all times during the Agreement, remain responsible. The Consultant agrees, if requested by the Commissioner of NYSDOT or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

43.2 Suspension or Work (for Non-Responsibility)

The Commissioner of NYSDOT (or his or her designee), in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement at any time when he or she discovers information that calls into question the responsibility of the Consultant. In the event of such suspension, the Consultant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Consultant shall comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of NYSDOT (or his or her designee) issues a written notice authorizing the resumption of performance under the Agreement.

43.3 Termination (for Non-Responsibility)

Upon written notice to the Consultant, and a reasonable opportunity to be heard with appropriate NYSDOT or staff, the Agreement may be terminated by Commissioner of NYSDOT (or his or her designee) at the Consultant's expense where the Consultant is determined by the Commissioner of NYSDOT (or his or her designee) to be non-responsible. In such event, the Commissioner of NYSDOT (or his or her designee) may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

44 Subcontractors/Subconsultants

All subcontractors and subconsultants performing work on this project shall be bound by the same required contract provisions as the prime consultant. All agreements between the prime consultant and a subcontractor or subconsultant shall include all standard required contract provisions, and such agreements shall be subject to review by the State.

45 Covenant Against Contingent Fee

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this AGREEMENT, and that they have not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this AGREEMENT. For breach or violation of this warranty, the STATE shall have the right to annul this AGREEMENT without liability, or, in 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.

46 Code of Ethics

The CONSULTANT specifically agrees that this AGREEMENT may be canceled or terminated if any work under this AGREEMENT is in conflict with the provisions of Section 74 of the New York State Public Officer's Law, as amended, establishing a Code of Ethics for State officers and employees. The CONSULTANT shall not engage, on a full or part-time or other basis any professional or technical personnel who are or have been at any time during the period of this AGREEMENT in the employ of the Federal Highway Administration or the highway organizations of any public employer, except regularly retired employees, without the consent of the public employer of such person.

47 Death or Disability of the Consultant

In case of the death or disability of one or more but not all the persons herein referred to as CONSULTANT, the rights and duties of the CONSULTANT shall devolve upon the survivors of them, who shall be obligated to perform the services required under this AGREEMENT, and the STATE shall make all payments due to them.

In case of the death or disability of all the persons herein referred to as CONSULTANT, all data and records pertaining to the PROJECT shall be delivered within (60) days to the STATE or their duly authorized representative. In case of the failure of the CONSULTANT'S successors or personal representatives to make such delivery on demand, then in that event the representatives of the CONSULTANT shall be liable to the STATE for any damages it may sustain by reason thereof. Upon the delivery of all such data to the STATE, the STATE will pay to the representatives of the CONSULTANT all amounts due the CONSULTANT, including retained percentages to the date of the death of the last survivor.

48 Disposition of Data

At the time of completion of the work, the CONSULTANT shall make available to the STATE all documents and data pertaining to the work or to the PROJECT which materials at all times shall be the property of the STATE. It is agreed that the CONSULTANT may maintain copies of all documents and data. Or in the event that this Agreement is terminated for any reason, then, within ten (10) days after such termination, the CONSULTANT shall make available to the STATE the aforementioned data and material. All technical data in regard to the PROJECT existing in the office of the STATE or existing in the offices of the CONSULTANT shall be made available to the other party to this Agreement without expense to such other party.

49 Ensuring Pay Equity by State Consultants/Contractors

In accordance with Executive Order 162, issued on January 9, 2017, the consultant shall provide detailed workforce utilization reports of the CONSULTANT and each subconsultant – or subcontractor – that include, in addition to equal employment opportunity information, the job title and salary of each employee directly performing work on a STATE contract.

If the CONSULTANT cannot identify the individuals working directly on a State contract, then the CONSULTANT and each subconsultant shall provide such information of each employee in the CONSULTANT'S entire workforce. Such information shall be reported to the Department at quarterly intervals.

The reporting period shall be on a quarterly basis (January 1 through March 31, April 1 through June 30, July 1 through September 30 and October 1 through December 31). The reporting requirement shall begin on the effective date of the contract and continue for the duration of the contract term. Reports shall be submitted within 15 calendar days from the end of each reporting period. This provision is in effect for the quarterly reporting period ending December 31, 2017, or the quarterly reporting period that is immediately subsequent to the effective date of the contract, whichever date is later.

Detailed workforce utilization reports, as required above, shall be submitted in such form and in such manner as shall be required by the Department and as in accordance with NYSDOT Consultant Instruction 17-01.

The Consultant shall include this provision in every subcontract so that such provisions shall be binding upon each subconsultant, if the subcontract is in excess of \$25,000.

50 Conflict of Interest

The CONSULTANT has provided a form (Vendor Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative attesting that the CONSULTANT's performance of the services does not and will not create a conflict of interest with, nor position the CONSULTANT to breach any other contract currently in force with the State of New York, that the CONSULTANT will not act in any manner that is detrimental to any STATE project on which the CONSULTANT is rendering services.

The CONSULTANT hereby reaffirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the CONSULTANT's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this AGREEMENT. The CONTRACTOR shall have a duty to notify the STATE immediately of any actual or potential conflicts of interest.

In conjunction with any subcontract under this AGREEMENT, the CONSULTANT shall obtain and deliver to the STATE, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subconsultant/subcontractor. The CONSULTANT shall also require in any subcontracting agreement that the subconsultant/subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the STATE a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subconsultants/subcontractors prior to entering into a subcontract.

The STATE and the CONSULTANT recognize that conflicts may occur in the future because the CONSULTANT may have existing, or establish new, relationships. The STATE will review the nature of any relationships and reserves the right to terminate this AGREEMENT for any reason, or for cause, if, in the judgment of the STATE, a real or potential conflict of interest cannot be cured.

51 Ethics Requirements

The Consultant and its Subconsultants/Subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the

rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the "Ethics Requirements"). The Consultant certifies that all of its employees and those of its Subconsultants/Subcontractors who are former employees of the State and who are assigned to perform services under this Contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Consultant or its Subconsultants/Subcontractors and who is disqualified from providing services under this Contract pursuant to any Ethics Requirements may share in any net revenues of the Consultant or its Subconsultants/Subcontractors derived from this Contract. The Consultant shall identify and provide the State with notice of those employees of the Consultant and its Subconsultants/Subcontractors who are former employees of the State that will be assigned to perform services under this Contract, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that the Consultant provide it with whatever information the State deems appropriate about each such person's engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any Subconsultant/Subcontractor if utilizing such Subconsultant/Subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The State shall have the right to terminate this Contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

52 Subcontracting

The Consultant agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the State. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

The CONSULTANT may arrange for a portion(s) of its responsibilities under this AGREEMENT to be subcontracted to qualified, responsible subconsultants/subcontractors, subject to approval of the STATE. If the CONSULTANT determines to subcontract a portion of the services, the subconsultants/subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this AGREEMENT must be fully explained by the CONSULTANT to the STATE. As part of this explanation, the subconsultant/subcontractor must submit to the STATE a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form, as required by the CONSULTANT prior to execution of this AGREEMENT.

The CONSULTANT retains ultimate responsibility for all services performed under the AGREEMENT.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this AGREEMENT including, but not limited to, the body of this AGREEMENT, Appendix A – Standard Clauses for New York State Contracts and the advertisement for proposals. Unless waived in writing by the STATE, all subcontracts between the CONSULTANT and subconsultants/subcontractors shall expressly name the STATE, through the Department of Transportation, as the sole intended third party beneficiary of such subcontract. The STATE reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make the STATE a party to any

subcontract or create any right, claim, or interest in the subconsultant/subcontractor or proposed subconsultant/subcontractor against the STATE.

The STATE reserves the right, at any time during the term of the AGREEMENT, to verify that the written subcontract between the CONSULTANT and subconsultants/subcontractors is compliant with all provisions of this Section and any subcontract provisions contained in this AGREEMENT.

The CONSULTANT shall give the STATE immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subconsultant/subcontractor or which may affect the performance of the CONSULTANT's duties under the AGREEMENT. Any subcontract shall not relieve the CONSULTANT in any way of any responsibility, duty and/or obligation of the AGREEMENT.

If at any time during performance under this AGREEMENT total compensation to a subconsultant/subcontractor exceeds or is expected to exceed \$100,000, that subconsultant/subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.

IN WITNESS WHEREOF, this Contract #C037856 has been executed by the STATE, acting by and through the Commissioner of Transportation, and the Consultant, by signature below, has duly executed this Agreement effective the day and year first above written.

In addition to the acceptance of this Agreement, the Department certifies that original copies of this signature page will be attached to all other exact copies of this Agreement.

RECOMMENDED BY

FOR THE PEOPLE OF THE STATE OF NEW YORK

CONTRACT MANAGEMENT DATE By _____
DEPARTMENT OF TRANSPORTATION DATE

Consultant Certifications: I certify that all the information with respect to the “Proposer Responsibility Questionnaire” submitted by <FIRM NAME> on the <DATE> pursuant to the requirements set forth in OSC’s ‘Financial Guide to Operations’ is complete true and accurate. I additionally certify that nothing has occurred since the date of that submission that would result in requiring a change or alteration to any of the answers provided on the “Proposer Responsibility Questionnaire” submitted that date.

In addition to the acceptance of this Agreement, I certify that all information provided to NYSDOT with respect to the requirements contained in State Finance Law Sections 139j & 139k is complete, true, and accurate.

By: _____ Title: _____
<FIRM NAME>

Date: _____

Right of Way and Real Estate IT System Services for NYSDOT

APPROVALS

ATTORNEY GENERAL

THOMAS P. DINAPOLI
NYS Office of the State Comptroller

By: _____

By: _____

Date: _____

Date: _____

Acknowledgement for Contract #C037856 Original Agreement

For contracts signed in New York State

State of New York)
County of)ss.:

On the _____ day of _____ in the year 201__, before me the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument, the individual(s), or the person(s) on behalf of whom the individual(s) acted, executed the instrument.

NOTARY PUBLIC

My Commission Expires: _____

For contracts signed **outside** New York State

State of)
County of)ss.:

On the _____ day of _____ in the year 201__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument, the individual(s), or the person(s) on behalf of whom the individual(s) acted, executed the instrument and that such individual made such appearance before the undersigned in _____ (insert the city or other political subdivision and the state or country or other place the acknowledgement was taken).

NOTARY PUBLIC

(Signature and office of individual taking
acknowledgement)

My Commission Expires: _____

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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

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

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

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

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

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

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State

assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

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

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

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

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

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

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

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

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

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

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

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor

shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

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

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

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

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

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

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

Updated January 2014

APPENDIX A-1

SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- (1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- (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 NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b.) cancellation, termination or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

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

APPENDIX B

REQUIREMENTS FOR FEDERALLY-AIDED TRANSPORTATION PROJECTS

There is a substantial body of requirements attached to the use of Federal highway or transportation aid. These requirements create or overlay processes, procedures, documentation requirements, authorizations, approvals and certifications that may be substantially greater or different from those that are not funded with Federal-aid and proceed under applicable State and local laws, customs and practices. Under Title 23 of the United States Code, the New York State Department of Transportation (NYSDOT) is responsible for the administration of transportation projects in New York State to which NYSDOT provides Federal highway or transportation-related aid. Through this Agreement, which provides or is associated with such funding, NYSDOT delegates various elements of project and funding administration as described elsewhere in this Agreement. In undertaking a Federally-aided project, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement with Federal-aid funding or project administration agrees to proceed in compliance with all the applicable Federal-aid requirements.

NYSDOT, in cooperation with FHWA, has assembled the body of Federal-aid requirements, procedures and practices in its "Procedures for Locally Administered Federal-Aid Projects" (available through NYSDOT's web site at: www.dot.ny.gov/plafap). In addition, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement for Federal-aid funding or project administration that enters into Federally aided project construction contracts is required to physically incorporate into all its Federally aided construction contracts and subcontracts there under the provisions that are contained in Form FHWA-1273 (available from NYSDOT or electronically at: www.fhwa.dot.gov/programadmin/contracts/1273.htm).

In addition to the referenced requirements, the attention of Municipality/Sponsor hereunder is directed to the following requirements and information:

NON DISCRIMINATION/EEO/DBE REQUIREMENTS

The Municipality/Sponsor and its contractors agree to comply with Executive Order 11246, entitled "Equal Employment Opportunity" and United States Department of Transportation (USDOT) regulations (49 CFR Parts 21, 23, 25, 26 and 27) and the following:

1. **NON DISCRIMINATION**. No person shall, on the ground of race, color, creed, national origin, sex, age or handicap, be excluded from participation in, or denied the benefits of, or be subject to, discrimination under the Project funded through this Agreement.
2. **EQUAL EMPLOYMENT OPPORTUNITY**. In connection with the execution of this Agreement, the Municipality/Sponsor's contractors or subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, color, sex or national origin. Such contractors shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin or age. Such actions 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.
3. **DISADVANTAGED BUSINESS ENTERPRISES**. In connection with the performance of this Agreement, the Municipality/Sponsor shall cause its contractors to cooperate with the State in meeting its commitments and goals with regard to the utilization of Disadvantaged Business Enterprises (DBEs) and will use its best efforts to ensure that DBEs will have opportunity to compete for subcontract work under this Agreement. Also, in this connection the Municipality or Municipality/Sponsor shall cause its contractors to undertake such actions as may be necessary to comply with 49 CFR Part 26.

As a sub-recipient under 49 CFR Part 26.13, the Municipality/Sponsor hereby makes the following assurance.

The Municipality/Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United States Department of Transportation (USDOT)-assisted contract or in the administration of its Disadvantaged Business Enterprise (DBE) program or the requirements of 49 CFR Part 26. The Municipality/Sponsor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of the United States Department of Transportation-assisted contracts. The New York State Department of Transportation's DBE program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the

matter for enforcement under [18 U.S.C. 1001](#) and/or the Program Fraud Civil Remedies Act of 1986 ([31 U.S.C. 3801](#) et seq.).

FEDERAL SINGLE AUDIT REQUIREMENTS

Non-Federal entities that expend \$500,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations". Non-Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non-Federal entities that expend less than \$500,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency¹ the New York State Department of Transportation, the New York State Comptroller's Office and the U.S. Governmental Accountability Office (GAO).

Non-Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE

The Catalog of Federal Domestic Assistance ([CFDA](#)²), is an on-line database of all Federally-aided programs available to State and local governments (including the District of Columbia); Federally recognized Indian tribal governments; Territories (and possessions) of the United States; domestic public, quasi-public, and private profit and nonprofit organizations and institutions; specialized groups; and individuals.

THE CFDA IDENTIFICATION NUMBER

OMB Circular A-133 requires all Federal-aid recipients to identify and account for awards and expenditures by CFDA Number. The Municipality/Sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

The most commonly used CFDA number for the Federal Aid Highway Planning and Construction program is 20.205. Additional CFDA numbers for other transportation and non-transportation related programs are:

20.215	Highway Training and Education
20.219	Recreational Trails Program
20.XXX	Highway Planning and Construction - Highways for LIFE;
20.XXX	Surface Transportation Research and Development;
20.500	Federal Transit-Capital Investment Grants
20.505	Federal Transit-Metropolitan Planning Grants
20.507	Federal Transit-Formula Grants
20.509	Formula Grants for Other Than Urbanized Areas
20.600	State and Community Highway Safety
23.003	Appalachian Development Highway System
23.008	Appalachian Local Access Roads

PROMPT PAYMENT MECHANISMS

In accordance with 49 CFR 26.29, and NY State Finance Law 139-f or NY General Municipal Law 106-b(2) as applicable:

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 7 calendar days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

¹ The designated cognizant agency for audit shall be the federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB changes it.

² www.cfda.gov/

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 7 calendar days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

USE OF UNITED STATES-FLAG VESSELS: The contractor agrees:

(1) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

(2) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

(3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

Updated April 2016

APPENDIX B-1

U.S. GOVERNMENT (FTA) REQUIRED CLAUSES

Any use of “recipient” or “subrecipient” shall mean the grant recipient of the associated agreement to which this appendix is incorporated and applies. Such terms are interchangeable and may be used contemporaneously. A recipient or subrecipient shall impose any requirements of this appendix, or associated agreement, to any sub-awardee.

Any use of “Third Party”, “Third-Party Participant”, or variations thereof, shall mean a grant recipient, sub-awardee, and contractor(s), subcontractor(s) or suppliers, whose work under the associated agreement is supported with FTA funding, eligible non-federal share dedicated to the Project, or is dedicated as an in-kind contribution eligible for non-federal share. Such terms are interchangeable and may be used contemporaneously.

Any use of “Sub-agreement” or “Sub-grant” shall mean an agreement through which the Recipient awards federal assistance to a Sub-grantee(s) to support or stimulate any of the Recipient’s or Sub-grantee(s) Projects or related activities supported under the Award, the accompanying Underlying Agreement, or Amendments thereto, but does not include a third-party contract, third-party subcontract, or lease.

Any use of “Sub-awardee” shall mean any entity or person that receives federal assistance from the FTA through an associated agreement, but is not a direct recipient of fund from, or a direct party to this agreement with, the State. Sub-awardee shall not include a Third-Party Contractor, Third Party Subcontractor, or Lessee.

Fly America Requirements – Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

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

Buy America Requirements – Applicability – Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000)

Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating 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 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 60% domestic content for FY2016 and FY2017, a minimum 65% domestic content for FY2018 and FY2019 and a minimum 70% domestic content for FY2020 and beyond. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Charter Bus Requirements – Applicability – Operational Service Contracts. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Contractor shall comply with 49 USC 5323(d) and (g) and 49 CFR 604, which state that recipients and subrecipients of FTA assistance may provide charter service for transportation projects that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, “Charter Service,” 49 CFR part 604, the terms and conditions of which are incorporated herein by reference. If a Recipient or any Third-Party Participant that has operated a chart bus in violation of federal laws and regulations, FTA may: (1) Require the Recipient or Third-Party Participant to take such remedial measures as FTA considers appropriate, or (2) Bar the Recipient or Third-Party Participant from receiving Federal transit funds.

School Bus Requirements – School Bus Requirements – Applicability – Operational Service Contracts. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Pursuant to 69 USC 5323(f) or (g) as amended by MAP-21, 23 USC 133, 23 USC 142, and 49 CFR 605, recipients and subrecipients of FTA assistance shall not engage in school bus operations exclusively for transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients shall not use federally funded equipment, vehicles, or facilities. Violations. If a Recipient or any Third-Party Participant that has operated school bus service in violation of FTA's School Bus laws and regulations, FTA may: (1) Require the Recipient or Third-Party Participant to take such remedial measures as FTA considers appropriate, or (2) Bar the Recipient or Third-Party Participant from receiving Federal transit funds.

Cargo Preference - Use of US-Flag Vessels – Applicability – Contracts involving equipment, materials or commodities which may be transported by ocean vessels. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Recipient shall:

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

Seismic Safety – Applicability – Construction of new buildings or additions to existing buildings. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

Energy Conservation – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

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

Clean Water – Applicability – All Contracts and Subcontracts over \$250,000.

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with FTA assistance.

Safe Operation of Motor Vehicles- Applicability – All

a. **Seat Belt Use**. The Recipient agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. Section 402 note, (62 *Fed. Reg.* 19217), by:
Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles.

b. **Distracted Driving, Including Text Messaging While Driving**. The Recipient agrees to comply with:

- (1) **Safety**. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award,
- (2) **Recipient Size**. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size,

such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving, and

- (3) **Extension of Provision.** The Recipient is encouraged to include the immediately preceding Provision of section (1) – (2) in each third party sub-agreement (if applicable) at each tier supported with federal assistance.

Bus Testing – Applicability – Rolling Stock/Turnkey

Contractor [manufacturer] shall comply with 49 USC A5323(c) and FTA's implementing regulation 49 CFR 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall **provide a copy of the final test report** to the recipient prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under para. 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to the recipient's final acceptance of the first vehicle. If configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- 4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the US before Oct. 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

Pre-Award & Post-Delivery Audit Requirements - Applicability – Rolling Stock/Turnkey

Contractor shall comply with 49 USC 5323(l) and FTA's implementing regulation 49 CFR 663 and submit the following certifications:

- 1) Buy America Requirements: Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If contractor certifies compliance with Buy America, it shall submit documentation listing:
 - A. Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and
 - B. The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
 - C. Solicitation Specification Requirements: Contractor shall submit evidence that it will be capable of meeting the bid specifications.
 - D. Federal Motor Vehicle Safety Standards (FMVSS): Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the buses will not be subject to FMVSS regulations.

Lobbying – Applicability - Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$250,000

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. Section 1601, et seq.] - Contractors who apply or bid for an award of \$250,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier, up to the recipient.

Trafficking in Persons

- 1) **Legal Authorities.** The Recipient and subrecipient agrees to comply with federal requirements and guidance, including:
 - (a) Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. Section 7104(g), and
 - (b) The terms of this section, which have been derived from U.S. OMB regulatory guidance, "Award Term for Trafficking in Persons," 2 C.F.R. part 175, per U.S. OMB's direction.
- 2) **Definitions.** The Recipient agrees that **for purposes of this section:**
 - (a) **Employee** means either an individual who is employed by the Recipient or a Subrecipient, and is participating in a Project or related activities as set forth in the Underlying Agreement, or another person who is participating in a

Project or related activities as set forth in the Underlying Agreement and is not compensated by the Recipient, including, but not limited to, a volunteer, or an individual whose services are contributed by the Recipient or Third Party Participant as an in-kind contribution toward the cost sharing requirements of the Recipient's Underlying Agreement.

- (b) Forced labor means labor obtained by recruitment, harboring, transportation, provision, or other means of obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
 - (c) Private entity means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. Section 175.25, and includes a for-profit organization, or a nonprofit organization, including any nonprofit organization of higher education, hospital, or tribal organization other than one included in the definition of Indian Tribe at 2 C.F.R. Section 175.25(b).
 - (d) Severe forms of trafficking in persons has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. Section 7102.
 - (e) Commercial sex act has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. Section 7102.
 - (f) Coercion has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. Section 7102.
 - (g) Recipient or Direct Recipient means a non-federal entity that receives an award directly from the State of New York to carry out an activity under a federal program. The term "Recipient" does not include a Subrecipient.
 - (h) Subrecipient or Sub-grantee means any entity or person that receives federal assistance provided by the State instead of from the State directly, but does not include a Third-Party Contractor, Third Party Subcontractor, or Lessee.
 - (i) Sub-agreement or Sub-grant means an agreement through which the Recipient awards federal assistance to its Subrecipient(s) to support or stimulate any of the Recipient's or Subrecipient's Projects or related activities supported under the Award, the accompanying Underlying Agreement, or Amendments thereto, but does not include a third-party contract, third party subcontract, or lease.
 - (j) "This Section" any references to "this section" shall mean and refer to the section titled, **"Trafficking in Persons"**
- 3) Provisions Applicable to All Recipients. The Recipient agrees to and assures that it, and any Subrecipients, will:
- (a) Provide Information. Inform FTA immediately of any information it receives from any source alleging a violation of the prohibitions listed in this section, and
 - (b) Sub-agreement Provision. Certify and include the following provision in any sub-agreement it enters with a private entity as defined above in section (2)(c) of this section:
- Recipient, or sub recipient, agrees that it and its employees that participate in the Recipient's Award, may not:*
- 1. *Engage in severe forms of trafficking in persons during the period that the Recipient's Award is in effect,*
 - 2. *Procure a commercial sex act during the period that the Recipient's Award is in effect,*
 - or*
 - 3. *Use forced labor in the performance of the Recipient's Award or sub-agreements thereunder.*
- 4) Provisions Applicable to a Private Entity Recipient. If the Recipient is a private entity, it agrees that:
- (a) Prohibitions. It, its employees, its Subrecipients, and its Subrecipients' employees that participate in the Underlying Agreement will not:
 - 1 Engage in severe forms of trafficking in persons during the period that the Recipient's or Subrecipient's Underlying Agreement is in effect,
 - 2 Procure a commercial sex act during the period that the Recipient's or Subrecipient's Underlying Agreement is in effect, or
 - 3 Use forced labor in the performance of the Recipient's or Subrecipient's Underlying Agreement or sub-agreements.
 - (b) Termination of Federal Assistance. Section 106(g) of the TVPA, as amended, 22 U.S.C. Section 7104(g), and U.S. OMB regulatory guidance, "Award Term for Trafficking in Persons," 2 C.F.R. part 175, provide FTA and the State of New York, through receipt of federal funds, the right to unilaterally terminate the Underlying Agreement for a violation of that Act without penalty to the Federal Government or the State of New York, if FTA or the State of New York determines that the private entity Recipient or its Subrecipient:
 - 1 Has violated a prohibition described above in section (4)(a) of this Section, or
 - 2 Has an employee whose conduct is determined to have violated a prohibition described above in section (4)(a) of this Section because that employee's conduct is either:
 - a Associated with the performance of the Recipient's Underlying Agreement, or
 - b Imputed to the Recipient or Subrecipient using the standards of due process for conduct of an individual to an organization provided in:
 - (i) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, or
 - (ii) U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180.

- 5) Provisions Applicable to a Recipient That is Not a Private Entity. A Recipient that is not a private entity agrees that section 106(g) of the TVPA, as amended, 22 U.S.C. Section 7104(g), and U.S. OMB regulatory guidance, "Award Term for Trafficking in Persons," 2 C.F.R. part 175, provides FTA, and consequently the State, the right to unilaterally terminate the Underlying Agreement, without penalty to the Federal Government or the State of New York, for a violation of that Act if FTA, or the State of New York, determines that:
- (a) A private entity that is the Recipient or Subrecipient is determined to have engaged in severe forms of trafficking in persons during the period that the Recipient's or Subrecipient's Underlying Agreement is in effect; procured a commercial sex act during the period that the Recipient's or Subrecipient's Underlying Agreement is in effect; or used forced labor in the performance of the Recipient's or Subrecipient's Underlying Agreement or sub-agreements thereunder; or
 - (b) An employee of a private entity that is the Recipient or Subrecipient has engaged in severe forms of trafficking in persons during the period of time that the Recipient's or Subrecipient's Underlying Agreement is in effect; procured a commercial sex act during the period of time that the Recipient's or Subrecipient's Underlying Agreement is in effect; or used forced labor in the performance of the Recipient's or Subrecipient's Underlying Agreement or sub-agreements thereunder, and whose conduct described above is associated with the performance of the Recipient's or Subrecipient's Underlying Agreement; or is imputed to the Subrecipient using the standards for due process to impute the conduct of an individual to an organization as provided in U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200.
- 6) Remedies Other Than Termination of Federal Assistance. The Recipient or Subrecipient agrees that FTA's right to terminate federal assistance as provided in the TVPA and in sections (4)(b) and (5) are in addition to all other remedies for noncompliance available to the State and Federal Government under the associated grant agreement.

Access to Records and Reports– Applicability – As shown below. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a sub-grantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)(1), which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a sub-grantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)(1), which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$250,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a sub-grantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an recipient, subrecipient, or a sub-grantee of an FTA recipient, and in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)(1)) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto, as provided by 49 CFR 18.39(i)(11).

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

Federal Changes – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

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

Bonding Requirements – Applicability – For those construction or facility improvement contracts or subcontracts exceeding \$250,000, FTA may accept the bonding policy and requirements of the recipient, provided they meet the minimum requirements for construction contracts as follows:

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
 - (1) 50% of the contract price if the contract price is not more than \$1 million;
 - (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (3) \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

Bid Bond Requirements (Construction)

(a) 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.

(b) Rights Reserved - In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) 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 (Recipient).

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 (Recipient), 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 (Recipient'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 (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) 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.

Performance and Payment Bonding Requirements (Construction)

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

(a) 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 (Recipient).
2. The (Recipient) 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 (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:
 - (i) Fifty percent of the contract price if the contract price is not more than \$1 million.
 - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (iii) 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 (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

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

(a) The following situations may warrant a performance bond:

1. (Recipient) 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).
2. 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.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

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 (Recipient).
2. The (Recipient) 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 (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:
 - (i) Fifty percent of the contract price if the contract price is not more than \$1 million;
 - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (iii) Two and one half million if the contract price is increased.

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 (recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient).

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 (recipient) shall determine the amount of the patent indemnity to protect the (Recipient).

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to (Recipient), 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 (Recipient), 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 (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) 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).

Clean Air – Applicability – All contracts over \$250,000.

1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. 2) Contractor shall include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with FTA assistance.

Recycled Products – Applicability – All contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the current or previous fiscal year using Federal funds.

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.

Davis-Bacon and Copeland Anti-Kickback Acts – Applicability -Construction contracts and subcontracts, including actual construction, alteration and/or repair, including decorating and painting, over \$2,000

(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) Responsibilities

(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 officer shall 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 (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.

- (iv) 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.
- (v) 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.
- (vi) (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 thereof 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 (1)(v)(B) or (1)(v)(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 recipient 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 grantee 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 recipient 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.

(ii)(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.

(ii)(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 (3)(ii)(B) of this section.

(ii)(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 (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 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, contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in 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 18 USC 1001.

Contract Work Hours & Safety Standards Act – Applicability – Contracts over \$250,000

(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 40 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 40 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, contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable 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 40 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 recipient shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by 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 & 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 - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section, and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

Awards Involving Commerce. The Recipient agrees to comply, and assures that each Third-Party Participants will comply, with the Fair Labor Standards Act (FLSA), 29 U.S.C. Section 201 *et seq.* to the extent that the FLSA applies to employees performing work with federal assistance provided through the Underlying Agreement involving commerce, or as the Federal Government otherwise determines applicable.

No Government Obligation to Third Parties - Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

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

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

Program Fraud and False or Fraudulent Statements or Related Acts – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

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

- (2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.
- (3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Termination – Applicability – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$250,000

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

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

If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

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

If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.

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

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

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

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

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

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

of the parties shall be the same as if termination had been issued for the recipient's convenience.

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

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

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

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

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

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient.

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

j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

Government-wide Debarment and Suspension (Nonprocurement) – Applicability – Contracts over \$25,000

The Recipient/subrecipient agrees to the following:

(1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following:

(a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third-Party Participant that is debarred or suspended except as authorized by:

- (i) U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200,
- (ii) U.S. OMB, “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180, including any amendments thereto, and
- (iii) Executive Orders Nos. 12549 and 12689, “Debarment and Suspension,” 31 U.S.C. Section 6101 note,

(b) It will review the U.S. GSA “System for Award Management,” <https://www.sam.gov>, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and

(c) It will include, and require each of its Third-Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant:

- (i) Will comply with Federal debarment and suspension requirements, and
- (ii) Reviews the “System for Award Management” at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and
- (iii) If the Recipient suspends, debar, or takes any similar action against a Third-Party Participant or individual, the Recipient will provide immediate written notice to the:
 - (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project,
 - (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or
 - (c) FTA Chief Counsel,

Contracts Involving Federal Privacy Act Requirements – Applicability - When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

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

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

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

Civil Rights Requirements– Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The following requirements apply to the underlying contract:

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

a. **Nondiscrimination in Federal Public Transportation Programs**. The Recipient agrees to, and assures that each Third-Party Participant will, comply with Federal transit law, 49 U.S.C. Section 5332 (FTA’s “Nondiscrimination” statute):

- (1) FTA’s “Nondiscrimination” statute prohibiting discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and
- (2) The FTA “Nondiscrimination” statute’s prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity,
- (3) Except as FTA determines otherwise in writing:
 - (a) General. Follow:
 - (i) The most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable Federal laws, regulations, and guidance, and
 - (ii) Other applicable Federal guidance that may be issued, but
 - (b) for the exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program;

b. **Nondiscrimination** – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third-Party Participant

will:

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

c. Equal Employment Opportunity.

- (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third-Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and:
 - (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e et seq.,
 - (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note,
 - (c) Comply with Federal transit law, specifically 49 U.S.C. Section 5332, as stated in section a, and
 - (d) Comply with FTA Circular 4704.1 other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing.
- (2) General. The Recipient agrees to:
 - (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: (1) Race, (2) Color, (3) Religion, (4) Sex, (5) Disability, (6) Age, or (7) National origin,
 - (b) Take affirmative action that includes, but is not limited to: (1) Recruitment advertising, (2) Recruitment, (3) Employment, (4) Rates of pay, (5) Other forms of compensation, (6) Selection for training, including apprenticeship, (7) Upgrading, (8) Transfers, (9) Demotions, (10) Layoffs, and (11) Terminations, with the exception of Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer".
- (3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third-Party Participant, with:

- (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and
- (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note,

d. Disadvantaged Business Enterprise.

- (1) To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third-Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project, and Recipient agrees to comply with:
 - (a) Section 1101(b) of Map-21, 23 U.S.C. Section 101 note,
 - (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and
 - (c) Federal transit law, specifically 49 U.S.C. Section 5332,
- (2) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26,
- (3) Assurance. As required by 49 C.F.R. Section 26.13(a),

(4) The Recipient provides assurance that:

- (a) The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26.
- (b) The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts.
- (c) Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement.
- (d) Upon notification to the Recipient of its failure to abide by DBE requirements, the Federal Government may impose sanctions as provided for in 49 C.F.R. part 26, as implemented by the State through this agreement, and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. Section 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. Section 3801 et seq.,

(5) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under Map-21 and previous legislation.

e. Nondiscrimination on the Basis of Sex

The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. Section 1681 et seq., (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. Section 5332, as stated in section a,

f. Nondiscrimination on the Basis of Age

The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including:

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

g. Nondiscrimination on the Basis of Disability

The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities:

- (1) Federal laws, including:
 - (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities,
 - (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. Section 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of "employer,"
 - (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. Section 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities,
 - (d) Federal transit law, specifically 49 U.S.C. Section 5332, which now includes disability as a prohibited basis for discrimination, and
 - (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities,
- (2) Federal regulations, including:
 - (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37,
 - (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27,
 - (c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39,
 - (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38,
 - (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35,
 - (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36,

- (g) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630,
 - (h) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, Subpart F,
 - (i) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194, and
 - (j) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609, and
- (3) Other applicable Federal civil rights and nondiscrimination guidance,

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of:

- (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. Section 1101 et seq.,
- (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. Section 4541 et seq., and
- (3) The Public Health Service Act, as amended, 42 U.S.C. Sections 290dd – 290dd-2,

i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following:

- (1) Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” August 11, 2000, 42 U.S.C. Section 2000d-1 note, and
- (2) U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 Fed. Reg. 74087, December 14, 2005,

j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to:

- (1) Comply with other applicable Federal nondiscrimination laws and regulations, and
- (2) Follow Federal guidance prohibiting discrimination.

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

Breaches and Dispute Resolution – Applicability – All contracts over \$250,000

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient’s authorized representative. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient’s CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient’s CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. Section 3729.

Performance During Dispute - Unless otherwise directed by the recipient, 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 therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the recipient and 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 residing State.

Rights and Remedies - 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 recipient 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.

Patent and Rights Data –

Contracts involving experimental, developmental, or research work (\$10,000 or less, except for construction contracts over \$2,000).

Patent Rights

A. General. The Recipient agrees that:

- (1) Depending on the nature of the Project, the Federal Government may acquire patent rights when the Recipient or

Third-Party Participant produces a patented or patentable: (a) Invention, (b) Improvement, or (c) Discovery,

(2) The Federal Government's rights arise when the patent or patentable information is: (a) Conceived under the Project, or (b) Reduced to practice under the Project, and

(3) When a patent is issued or patented information becomes available as described in Patent Rights Section A(2), the Recipient agrees to: (a) Notify FTA immediately, and (b) Provide a detailed report satisfactory to FTA,

B. Federal Rights.

The Recipient agrees that:

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

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

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

Rights in Data and Copyrights

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

B. Examples of "Subject Data." Examples of "subject data" include, but are not limited to:

- (a) Computer software, (b) Standards, (c) Specifications, (d) Engineering drawings and associated lists, (e) Process sheets, (f) Manuals, (g) Technical reports, (h) Catalog item identifications, and (i) Related information, but do not include: (1) Financial reports,
- (2) Cost analyses, or (3) Other similar information used for Project administration,

C. General Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the Recipient's Project supported by the Underlying Agreement:

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

D. Federal Rights in Data and Copyrights. The Recipient agrees that:

- (1) License Rights. The Recipient must provide a license to its "subject data" to the Federal Government, which license is:
 - (a) Royalty-free, (b) Non-exclusive, and (c) Irrevocable,
- (2) Uses. The Federal Government's license must permit the Federal Government to take the following actions provided those actions are taken for Federal Government purposes: (a) Reproduce the subject data, (b) Publish the subject data, (c)

Otherwise use the subject data, and (d) Permit other entities or individuals to use the subject data, and

E. Special Federal Rights in Data for Research, Development, Demonstration, Deployment, and Special Studies Projects. In general, FTA's purpose in providing Federal funds for a research, development, demonstration, deployment, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to the Recipient and its Third-Party Participants, therefore, the Recipient agrees that:

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

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

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

G. Hold Harmless. Upon request by the Federal Government, the Recipient agrees that:

- (1) Violation by Recipient.
 - (a) If it willfully or intentionally violates any:
 - (1) Proprietary rights, (2) Copyrights, or (3) Right of privacy, and
 - (b) Its violation occurs from any of the following uses of Project data:
 - (1) Publication, (2) Translation, (3) Reproduction, (4) Delivery, (5) Use, or (6) Disposition, then
 - (c) It will indemnify, save, and hold harmless against any liability, including costs and expenses of:
 - (1) The Federal Government's officers acting within the scope of their official duties,
 - (2) The Federal Government's employees acting within the scope of their official duties, and
 - (3) Federal Government's agents acting within the scope of their official duties, but
- (2) Exceptions. The Recipient will not be required to indemnify the Federal Government for any liability described in Rights in Data and Copyrights Section G(1) if:
 - (a) Violation by Federal Officers, Employees or Agents. The violation is caused by the wrongful acts of Federal employees or agents, or
 - (b) State law. If indemnification is prohibited or limited by applicable State law,

H. Restrictions on Access to Patent Rights. Nothing in this Rights in Data and Copyrights section pertaining to rights in data either:

- (1) Implies a license to the Federal Government under any patent, or
- (2) May be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent,

I. Data Developed Without Federal Funding or Support. The Recipient understands and agrees that in certain circumstances it may need to provide data developed without any Federal funding or support to FTA. Nevertheless:

- (1) Protections. Rights in Data and Copyrights Sections A, B, C, and D generally do not apply to data developed without Federal funding, even though that data may have been used in connection with the Project, and
- (2) Identification of Information. The Recipient understands and agrees that the Federal Government will not be able to protect data developed without Federal funding from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential," and

J. Requirements to Release Data. The Recipient understands and agrees that the Federal Government may be required to release Project data and information the Recipient submits to the Federal Government as required by:

- (1) The Freedom of Information Act, 5 U.S.C. Section 552,
- (2) Another applicable Federal law requiring access to Project records,
- (3) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher

- Education, Hospitals, and Other Non-Profit Organizations,” specifically 49 C.F.R. Section 19.36(d), or
- (4) Other applicable Federal regulations and guidance pertaining to access to Project records.

Transit Employee Protective Provisions – Applicability – Contracts for transit operations except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

Public Transportation Employee Protective Arrangements

The Recipient agrees that 49 U.S.C. Section 5333(b) requires employee protective arrangements to be in place as a condition of award of FTA assistance made available or appropriated for FTA programs involving public transportation operations. U.S. DOL recognizes the following categories of arrangements:

1. **U.S. DOL Certification** When its Project involves public transportation operations and is financed with funding made available or appropriated for 49 U.S.C. Sections 5307, 5309, 5312, 5337, or 5339, as amended by Map-21, or former 49 U.S.C. Sections 5308, 5309, 5312, or other provisions of law as required by the Federal Government, U.S. DOL must provide a Certification of employee protective arrangements before FTA may provide financial assistance for the Project. Therefore, the Recipient understands and agrees, and assures that any Third-Party Participant providing public transportation operations will agree, that:
 - (a) It must carry out the Project as provided in its U.S. DOL Certification, which contains the terms and conditions that U.S. DOL has determined to be fair and equitable to protect the interests of any employees affected by the Project,
 - (b) It must comply with 49 U.S.C. Section 5333(b), and any future amendments thereto,
 - (c) It will follow the U.S. DOL guidelines, “Guidelines, Section 5333(b), Federal Transit Law,” 29 C.F.R. part 215, except as U.S. DOL determines otherwise in writing,
 - (d) It must comply with the terms and conditions of the U.S. DOL certification of public transportation employee protective arrangements for the Project, which certification is dated as identified on the Underlying Agreement, including:
 - (1) Alternative comparable arrangements U.S. DOL has specified for the Project,
 - (2) Any revisions U.S. DOL has specified for the Project, or
 - (3) Both, and
 - (e) It must comply with the following documents and provisions incorporated by reference in and made part of the Underlying Agreement for the Project:
 - (1) The U.S. DOL certification of public transportation employee protective arrangements for the Project, which certification is dated as identified on the Underlying Agreement,
 - (2) The documents cited in that U.S. DOL certification for the Project,
 - (3) Any alternative comparable arrangements that U.S. DOL has specified for the Project, and
 - (4) Any revisions that U.S. DOL has specified for the Project,
2. **Special Warranty** When its Project involves public transportation operations, and is financed with funding made available or appropriated for 49 U.S.C. Section 5311, as amended by Map-21, for former 49 U.S.C. Section 5311 in effect in FY 2012, or a previous fiscal year, or for section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, U.S. DOL will provide a Special Warranty for those projects, including projects under the Tribal Transit Program. Therefore, the Recipient understands and agrees, and assures that any Third-Party Participant providing public transportation operations will agree, that:
 - (a) It must comply with Federal transit laws, specifically 49 U.S.C. Section 5333(b),
 - (b) Follow the U.S. DOL guidelines, “Guidelines, Section 5333(b), Federal Transit Law,” 29 C.F.R. part 215, except as U.S. DOL determines otherwise in writing,
 - (c) It will comply with the U.S. DOL Special Warranty for its Project that is most current on the date when it executed the Underlying Agreement, and documents cited therein, including: (1) Any alternative comparable arrangements U.S. DOL has specified for the Project, (2) Any revisions U.S. DOL has specified for the Project, or (3) Both, and
 - (d) It will comply with the following documents and provisions incorporated by reference in and made part of the Underlying Agreement:
 1. The U.S. DOL Special Warranty for its Project,
 2. Documents cited in that Special Warranty,
 3. Alternative comparable arrangements U.S. DOL specifies for the Project, and
 4. Any revisions that U.S. DOL has specified for the Project, and
3. **Special Arrangements for 49 U.S.C. Section 5310 Projects.** The Recipient understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that although pursuant to 49 U.S.C. Section 5310, and former 49 U.S.C. Sections 5310 or 5317, FTA has determined that it was not “necessary or appropriate” to apply the conditions of 49 U.S.C. Section 5333(b) to Subrecipients participating in the program to provide public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right

to make the following exceptions:

- (a) FTA will make case-by-case determinations of the applicability of 49 U.S.C. Section 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and
- (b) FTA reserves the right to make other exceptions as it deems appropriate.

Disadvantaged Business Enterprise (DBE) – Applicability – Contracts over \$10,000 awarded on the basis of a bid or proposal offering to use DBEs

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

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

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

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

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

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

Prompt Payment – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

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

Incorporation of Federal Transit Administration (FTA) Terms – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

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

Drug & Alcohol Abuse and Testing – Applicability – Operational service contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The Contractor agrees to comply with the following Federal substance abuse regulations:

- (a) Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 C.F.R. Part 32, that implements the Drug-Free Workplace Act of 1988 as amended, 41 U.S.C. Sections 8103 et seq., and 2 CFR part 182,
- (b) Alcohol Misuse and Prohibited Drug Use. FTA Regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 USC 5331, as amended by Map-21, 49 CFR part 40, 49 USC chapter 53, 49 CFR Part 655, to the

extent applicable.

Other Federal Requirements:

Full and Open Competition – In accordance with 49 U.S.C. Section 5325, all procurement transactions shall be conducted in a manner that provides full and open competition.

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

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

Safeguarding Protected Personally Identifiable Information (PPI)

U.S. DOT Common Rules requires Recipient to implement, and require any sub-grantee, if any, to implement reasonable measures to safeguard protected personally identifiable information as well as any information that the FTA or pass-through entity designates as sensitive.

Access Requirements for Persons with Disabilities – Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

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

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

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

Other Contract Requirements - To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the recipient’s Procurement Guidelines, available upon request from the recipient.

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

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

Recipient and any third-party participant(s) shall comply with 49 U.S.C. Section 303, 23 C.F.R part 774, 54 U.S.C.

Section 306108, 54 U.S.C. 312501 *et. seq.*, 36 C.F.R. part 800, 42 U.S.C. Section 1996, Section 3161 note and Executive Order No. 13007 as such actions may relate to: Parks, Recreation Areas, Wildlife and Waterfowl Refuges; Historic Sites, Archeological and Historic Preservation, Protection of Historic Properties; preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act; compliance with environmental mitigation measures related to environmental assessments, environmental impact statements, categorical exclusions, memoranda of agreement, documents required under 49 U.S.C. Section 303, and other environmental documents.

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

Environmental Justice - Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following:

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

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

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

Geographic Preference

All project activities must be advertised without geographic preference, except as permitted by federal law, regulation, requirement or guidance. Such exception may include, but may not be limited to, A/E contracts under certain circumstances and preference for hiring veterans on transit construction projects.

Organizational Conflicts of Interest

The Recipient and subrecipient, if any, agrees that it will not enter a procurement that involves a real or apparent organizational conflict of interest described as follows:

- (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage:
 - (a) To that Third-Party Participant or another Third-Party Participant performing the Project work, and
 - (b) That impairs that Third Party Participant's objectivity in performing the Project work, or
- (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions,
- (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient:
 - (a) Any instances of organizational conflict of interest, or
 - (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and
- (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

Ethics

Standards of Conduct. At a minimum, the Recipient / Subrecipients will establish and maintain written Standards of Conduct covering conflicts of interest that:

(1) Apply to the following individuals who have a present or potential financial interest, or other significant interest, such as a present or potential employment interest in the selection, award, or administration of a third-party contract or subcontract:

(a) The Recipient or its Subrecipients' officers, employees, board members, or agents engaged in the selection, award, or administration of any third-party agreement,

(b) The immediate family members or partners of those listed above in section (1)(a) of this Master Agreement, and

(c) An entity or organization that employs or is about to employ any person that has a relationship with the Recipient or its Subrecipient listed above in sections (1)(a) and (b) of this Master Agreement;

(2) Prohibit those individuals listed above in section (1) from:

(a) Engaging in any activities involving the Recipient's or any of its Subrecipients' present or potential Third-Party Participants at any tier, including selection, award, or administration of a third-party agreement in which the individual has a present or potential financial or other significant interest, and

(b) Accepting a gratuity, favor, or anything of monetary value from a present or potential Third-Party Participant in the Recipient's Underlying Agreement, unless the gift is unsolicited and has an insubstantial financial or nominal intrinsic value; and

(3) Establish penalties, sanctions, or other disciplinary actions for violations, as permitted by state or local law or regulations, that apply to those individuals listed above in section (1) and the Recipient's or Subrecipient's Third Party Participants.

Federal Single Audit Requirements for State Administered Federally Aid Funded Projects

Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non Profit Organizations" (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non-Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non-Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptroller's Office and the U.S. Governmental Accountability Office (GAO).

Non-Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

Catalog of Federal Domestic Assistance (CFDA) Identification Number

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

The CFDA number for the Federal Transit Administration

Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable) agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

Veterans Preference As provided by 49 U.S.C. Section 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:

- (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. Section 2108, who have the skills and abilities required to perform construction work required under a third-party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and
- (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

Updated March 1, 2019

APPENDIX C

SPECIAL EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

Specific Equal Employment Opportunity Responsibilities

1. GENERAL (a) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity, as required by Federal Executive Order 11246, Federal Executive Order 11375, and NYS Executive Law Article 15, are set forth in required Contract Provisions (Form PR-1273 or 1316, as appropriate) and those Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. Non-discrimination and affirmative action are also required by the State Labor Law, Section 220-e, as amended, Executive Order 162, issued on January 9, 2017, and the Regulations of the NYS Department of Transportation relative to federally-assisted programs (Title 49, Code of Federal Regulations, Part 21 and Section 21.5), including employment practices when the agreement covers a program set forth in Appendix B of the Regulations. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for projects activities under this contract.

(b) The CONSULTANT will work with the STATE and the Federal Government in carrying out equal employment opportunity obligations and in their review of their activities under this contract.

(c) The CONSULTANT and all their sub-consultants and/or sub-contractors holding sub-contracts of \$10,000 or more will comply with the following minimum specific requirements of equal employment opportunity. (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to contractors and sub-contractors.) The CONSULTANT will include these requirements in every sub-contract with such modification of language as is necessary to make them binding on the sub-contractor.

(d) The CONSULTANT and all their sub-consultants and/or subcontractors shall comply with Executive Order 162, issued on January 9, 2017, requiring quarterly workforce utilization reports, detailing reports of the Consultant and all of their subconsultants, which includes in addition to equal opportunity information, the job and salary of each employee directly performing work on a State contract.

2. EQUAL EMPLOYMENT OPPORTUNITY (“EEO”)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the contract.
- B. In performing the contract, the Consultant shall:

- 1. Ensure that each Consultant and subconsultant – or subcontractor – performing work on the contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
- 2. The Consultant shall submit an EEO policy statement to the New York State Department of Transportation (NYSDOT) after the date of the notice by the NYSDOT to award the contract to the Consultant as determined by the Department.
- 3. If the Consultant or any of its subconsultants, does not have an existing EEO policy statement, the NYSDOT may require the Consultant or subconsultant to adopt a model statement consistent with item B.4.a through d of this section.
- 4. The Consultant’s EEO policy statement shall include the following language:
 - a. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce.
 - b. The Consultant shall state in all solicitations or advertisements for employees that in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, natural origin, sex, age, disability or marital status.
 - c. The Consultant shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement

that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate the implementation of the Consultant's obligation herein.

- d. The Consultant will include provisions of Subdivisions (a) through (c) of this subsection 4 and the paragraph appearing immediately below which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subconsultant as to work in connection with the contract.

The Consultant shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Consultant and its subconsultants shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction or prior arrest.

3. EQUAL EMPLOYMENT OPPORTUNITY OFFICER The CONSULTANT will designate and make known to the New York State Department of Transportation contracting officers an Equal Employment Opportunity Officer, an Equal Opportunity Project Site Representative, and a Disadvantaged/Minority/Women Business Enterprise officer (hereinafter referred to as the EEO Officer, EEO Site Representative, and D/M/WBE. Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active equal employment opportunity program and who must be assigned adequate authority and responsibility to do so

4. DISSEMINATION OF POLICY (a) All members of the CONSULTANT's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the CONSULTANT's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To insure that the above agreement will be met, the following actions will be taken as a minimum:

- (1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less than once every six months, at which time the CONSULTANT's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.
- (2) All new supervisory (first level of supervision and above) or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the CONSULTANT's equal employment opportunity obligations within thirty days following their reporting for duty with the CONSULTANT.
- (3) All personnel who are engaged in direct recruitment for the project will be instructed in the CONSULTANT's procedures for locating and hiring minority group employees by the EEO Officer or appropriate company official. (Minority group referred to herein shall mean Black, Hispanic, Asian/Pacific Islander, American Indian/Alaskan.)

(b) In order to make the CONSULTANT's equal employment opportunity policy known to all employees, prospective employees and potential sources or employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the CONSULTANT will take the following actions:

- (1) Notices and posters setting forth the CONSULTANT'S equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
- (2) The CONSULTANT's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

(c) In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a sub-contract, including procurements of materials or equipment, each potential sub-contractor or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this agreement and the Regulations relative to non-discrimination.

5. RECRUITMENT (a) When advertising for employees, the CONSULTANT will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived. These advertisements shall state that all qualified applicants will be afforded equal employment opportunity without regard to race, religion, sex, color, national origin, age, disability or marital status.

(b) The CONSULTANT will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the CONSULTANT's EEO Officer will identify sources of potential minority group employees, and establish with such identified

sources procedures whereby minority group applicants may be referred to the CONSULTANT for employment consideration. In the event the CONSULTANT has a valid bargaining agreement providing for exclusive hiring hall referrals, the CONSULTANT is expected to observe the provisions of that agreement to the extent that the system permits the CONSULTANT's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the CONSULTANT to do the same, such implementation violates Executive Order 11246.)

(c) The CONSULTANT will encourage present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

6. PERSONNEL ACTIONS Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age, disability or marital status. The following procedures shall be followed:

(a) The CONSULTANT will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

(b) The CONSULTANT will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory practices.

(c) The CONSULTANT will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the CONSULTANT will promptly take corrective action. If the review indicated that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

(d) The CONSULTANT will promptly investigate all complaints of alleged discrimination made in connection with obligations under this agreement, will attempt to resolve such complaints, and will take appropriate corrective action within 15 days. All subsequent corrective actions or decisions will also be documented and forwarded to the NYS Department of Transportation Compliance Officer within 7 days after such action has taken place. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the CONSULTANT will inform every complainant of the results and all of their avenues of appeal should the complaint be denied.

7. TRAINING AND PROMOTION (a) The CONSULTANT will assist in locating, qualifying and increasing the skills of minority group and women employees, and applicants for employment.

(b) Consistent with the CONSULTANT's work force requirements and as permissible under the Federal and State regulations, the CONSULTANT shall make full use of training programs; i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance. In the event the Training Special Provision is provided under this contract, this subparagraph is superseded thereby.

(c) The CONSULTANT will advise employees and applicants for employment of available training programs and entrance requirements for each.

(d) The CONSULTANT will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

8. UNIONS If the CONSULTANT relies in whole or in part upon unions as a source of employees, the CONSULTANT will use their best effort to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and, to effect referrals by such unions of minority and female employees. The CONSULTANT will send to each labor union or representative of workers with which he has or is bound by a collective bargaining or other agreement or understanding, a notice to be provided by the State Division of Human Rights, advising such labor union or representative of the CONSULTANT's compliance and with the non-discrimination clauses. Actions by the CONSULTANT, either directly or through a CONSULTANT's association acting as agent, will include the procedures set forth below:

(a) The CONSULTANT will use their best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

(b) The CONSULTANT will use their best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age, disability or marital status.

(c) The CONSULTANT is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union, and such labor union refuses to furnish such information to the CONSULTANT. The CONSULTANT shall so certify to the STATE and shall set forth what efforts have been made to obtain such information. Further, if the CONSULTANT was directed to do so by the contracting agency as part of the bid or negotiations of this contract, the CONSULTANT shall request such labor union or representative to furnish him with a written statement that such labor union or representative accepts the non-discrimination clauses and will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment and the terms and conditions of employment under this contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the CONSULTANT shall promptly notify the State Division of Human Rights and set forth what efforts have been made to obtain such information.

(d) In the event the union is unable to provide the CONSULTANT with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the CONSULTANT will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age, disability or marital status, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the CONSULTANT has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the CONSULTANT from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such CONSULTANT shall immediately notify the New York State Department of Transportation.

9. AFFIRMATIVE ACTION IN SUBCONTRACTING (a) The CONSULTANT will not discriminate on the grounds of race, religion, sex, color, national origin, age, disability or marital status in the selection of subcontractors, including procurements and leases of equipment.

(b) If the CONSULTANT determines to use a subcontractor as part of this agreement, affirmative action shall be taken to increase the participation of minority business firms in that work. As part of that affirmative action, the CONSULTANT will identify and contact minority business firms and solicit proposals for the work to be subcontracted. The STATE will provide a list of names of minority business firms to the CONSULTANT. Another source that should be contacted for a list of minority business firms is the Governor's Office of Minority & Women's Business Development (GOMWBD).

(c) The CONSULTANT will document the affirmative action steps taken to comply with paragraph 9b. Such documentation will be provided at the time or submittal of a formal proposal to the State's Contracts Bureau.

(d) By execution of this agreement, the CONSULTANT certifies that the affirmative action steps in 9a, 9b & 9c above were taken when soliciting proposals for the work in this agreement indicated to be subcontracted and that these steps will be taken should any work be subcontracted in the future.

(e) The CONSULTANT will insure binding subcontractor and vendor compliance with their EEO obligations. The CONSULTANT will take such actions in enforcing such provisions of such subcontract or purchase order as the contracting agency may direct, including sanctions or remedies for non-compliance. If the CONSULTANT becomes involved in or is threatened with litigation with a subcontractor or a vendor as a result of such direction by the contracting agency, the CONSULTANT shall promptly so notify the Attorney General, requesting him to intervene and protect the interest of the State of New York.

10. RECORDS AND REPORTS (a) The CONSULTANT will keep such records as are necessary to determine compliance with the CONSULTANT's equal employment opportunity obligations. The records kept by the CONSULTANT will be designed to indicate:

- (1) The number of minority and non-minority group members and women employed in each work classification on the project, where required by the NYS D.O.T Compliance Officer.
- (2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to CONSULTANTS who rely in whole or in part on unions as a source of their work force).
- (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees.
- (4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.
- (5) Compliance with all other requirements in these provisions such as meetings, instructions, employment efforts, etc.

(b) The CONSULTANT will comply with Sections 291-299 of the Executive Law and Civil Rights Law and will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts other sources of information, and its facilities as may be determined by State or Federal officials to be pertinent to ascertain compliance with such Regulations, orders and instructions. All such records must be retained for a

period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State and the Federal Highway Administration.

(c) Failure to comply with these Special EEO Provisions may be considered unsatisfactory performance and may subject the agreement to termination under the termination article of this agreement. Non-compliance may result in the CONSULTANT's being declared ineligible for future agreements made by or on behalf of the STATE or a public authority or agency of the STATE, until he satisfies the State Commissioner of Human Rights that he has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the State Division of Human Rights have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the State Division of Human Rights, notice thereof has been given to the CONSULTANT and an opportunity has been afforded them to be heard publicly before the State Commissioner of Human Rights or official designee. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided for by law. These may include, but are not limited to:

- (1) withholding of payments to the CONSULTANT under the agreement until the CONSULTANT complies, and/or
- (2) cancellation, termination or suspensions of the agreement in whole or in part.

11. TRAINING SPECIAL PROVISIONS This Training Special Provision supersedes paragraph 7.b above and is in implementation of 23 CFR Subpart A, Section 230.111 & Executive Order 11246.

As part of the CONSULTANT's equal employment opportunity affirmative action program training shall be provided as follows:

The CONSULTANT shall provide on-the-job training aimed at developing full competence in the job classification involved.

The number of months of training to be provided under these special provisions is previously stated in this Agreement.

In the event that the CONSULTANT subcontracts a portion of the contract work, it shall be determined how many, if any, of the trainees are to be trained by the subcontractor, provided however, that the CONSULTANT shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The CONSULTANT shall also insure that this training special provision is made applicable to such subcontract.

The number of trainees shall be distributed among the work classifications on the basis of the CONSULTANT's needs. Along with their proposal, the CONSULTANT shall submit to the New York State Department of Transportation for approval the proposed number of trainees to be trained in each selected classification, their estimated salaries and a training schedule. The salaries to be paid trainees shall not be less than 75 percent of the average hourly rate approved in the agreement for the classification to be trained. During the period from the beginning of the project to its completion, the trainee shall receive reasonable salary increases commensurate to the abilities and effort exerted by the trainee. The training schedule required should indicate the start of work and appropriate incremental salary steps in accord with the above.

Training and upgrading the proficiency of minorities and women is a primary objective of this Training Special Provision. Accordingly, the CONSULTANT shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The CONSULTANT will be responsible for demonstrating the steps that have been taken in pursuance thereof, prior to a determination as to whether the CONSULTANT is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which they have successfully completed a training program or in a classification in which they have been employed. The CONSULTANT should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the CONSULTANT's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training schedule developed by the CONSULTANT and approved by the State and Federal Highway Administration. The State and the Federal Highway Administration shall approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the CONSULTANT and to assist in qualifying the average trainee toward proficiency in the classification concerned by the end of the training period. Approval of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. Training is permissible in lower level management positions. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

The CONSULTANT will be reimbursed for the cost of any and all training under the payment terms of this agreement. This can include offsite training cost as discussed above. All offsite training must be defined in the training schedule. All costs

claimed or calculated for training must be directly related to the work defined in the scope of this agreement and/or added by supplemental agreement.

The CONSULTANT must demonstrate their best efforts and evidence good faith in hiring trainees for positions in the classification in which they have completed training.

The CONSULTANT shall furnish the trainee a copy of the program they will follow in the training. The CONSULTANT shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The CONSULTANT will provide for the maintenance of records and furnish periodic reports documenting their performance under this Training Special Provision.

Updated November 2, 2017

APPENDIX D

PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES

I. General Provisions

- A. The New York State Department of Transportation (NYSDOT) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (NYCRR) for all State contracts, as defined therein, with a value: (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing; or (2) in excess of \$100,000 for real property renovations and construction.
- B. The consultant to the subject contract (the “Consultant” and the “Contract” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to NYSDOT, to fully comply and cooperate with NYSDOT in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (EEO), and contracting opportunities for New York State-certified Minority and Women-Owned Business Enterprises (MWBEs). The Consultant’s demonstration of “good faith efforts” pursuant to 5 NYCRR Section 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section VII of this Appendix C and such other remedies are available to NYSDOT pursuant to the Contract and applicable law.

II. MWBE Utilization Plan

- A. The Consultant represents and warrants that the Consultant has submitted an MWBE Utilization Plan, or shall submit a MWBE Utilization Plan at such time as shall be required by NYSDOT. The MWBE Utilization Plan is to be submitted consistent with the requirements stated in the procurement document.
- B. The Consultant agrees to adhere to such MWBE Utilization Plan in the performance of the Contract.
- C. The Consultant further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such material breach, NYSDOT shall be entitled to any remedy provided herein, including but not limited to, a finding that the Consultant is non-responsive.

III. Waivers Post Contract Execution

- A. If the Consultant, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Consultant may submit a request for a waiver to the NYSDOT Contract Management Bureau, Civil Rights Unit. Such waiver request must be supported by evidence of the Consultant’s good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, NYSDOT shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- B. If NYSDOT, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section VI, or any other relevant information, determines that the Consultant is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, NYSDOT may issue a notice of deficiency to the Consultant. The Consultant must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of the MWBE Contract Goals.

IV. Liquidated Damages – MWBE Participation

- A. Where NYSDOT determines that the Consultant is not in compliance with the requirements of this Appendix and the Consultant refuses to comply with such requirements, or if the Consultant is found to have willfully and

intentionally failed to comply with the MWBE participation goals, the Consultant shall be obligated to pay to NYSDOT liquidated damages.

- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to the MWBEs had the Consultant achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by NYSDOT, the Consultant shall pay such liquidated damages to NYSDOT within sixty (60) days after they are assessed. Provided, however, that if the Consultant has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR Section 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Consultant following the complaint process.

Revised July 12, 2017

APPENDIX E

INFORMATION TECHNOLOGY INFRASTRUCTURE REQUIREMENTS

1. PROTECTION OF DATA, INFRASTRUCTURE AND SOFTWARE

1.1 Consultant is responsible for providing physical and logical security for all Data, infrastructure (e.g. hardware, networking components, physical devices), and software related to the services the Consultant is providing under this Agreement.

1.2 All Data security provisions agreed to by the Consultant within this Agreement may not be diminished for the duration of this Agreement. No reduction in these conditions in any fashion may occur at any time without prior written agreement by the parties amending this Agreement.

2. SECURITY POLICIES AND NOTIFICATIONS

2.1 State Security Policies and Procedures: The Consultant and its personnel shall review and implement all State security policies, procedures and directives currently existing or implemented during the term of this Agreement, including ITS Policy NYS-P03-002 Information Security Policy (or successor policy(ies)).

2.2 Security Incidents: Consultant shall address any Security Incidents in the manner prescribed in ITS Policy NYS-P03-002 Information Security Policy (or successor policy(ies)), including the New York State Cyber Incident Reporting Procedures incorporated therein or in such successor policy(ies).

3. DATA BREACH - REQUIRED CONSULTANT ACTIONS

3.1 Unless otherwise provided by law, in the event of a Data Breach, the Consultant shall:

3.1.1 notify the NYSDOT Project Coordinator or their designated contact person(s), by telephone as soon as possible, but in no event more than four (4) hours from the time the Consultant has knowledge of a Data Breach;

3.1.2 consult with and receive authorization from the NYSDOT Project Coordinator as to the content of any notice to affected parties prior to notifying any affected parties to whom notice of the Data Breach is required, either by statute or by NYSDOT;

3.1.3 coordinate all communication regarding the Data Breach with the NYSDOT Project Coordinator

3.1.4 cooperate with the NYSDOT Project Coordinator in attempting (a) to determine the scope and cause of the breach; and (b) to prevent the future recurrence of such security breaches; and

3.1.5 take corrective action in the timeframe required by the NYSDOT Project Coordinator. If Consultant is unable complete the corrective action within the required timeframe, the NYSDOT Project Coordinator may contract with a third party to provide the required services until corrective actions and services resume in a manner acceptable to NYSDOT, or until NYSDOT has completed a new

procurement for a replacement service system. The Consultant will be responsible for the cost of these services during this period.

- 3.2 Nothing herein shall in any way (a) impair the authority of the Office of the Attorney General (“OAG”) to bring an action against Consultant to enforce the provisions of the New York State Information Security Breach Notification Act (ISBNA) or (b) limit Consultant's liability for any violations of the ISBNA or any other applicable statutes, rules or regulations.

4. DATA OWNERSHIP, ACCESS AND LOCATION

4.1 Data Ownership: NYSDOT shall own all right, title and interest in Data.

4.2 Access to Data:

4.2.1 NYSDOT shall have access to its Data at all times, through the term of the Agreement.

4.2.2 NYSDOT shall have the ability to import or export Data in piecemeal or in its entirety at NYSDOT’s discretion, without interference from the Consultant.

4.3 Consultant Access to Data: The Consultant shall not copy or transfer Data unless authorized by NYSDOT. In such an event the Data shall be copied and/or transferred in accordance with the provisions of this Section. Consultant shall not access any Data for any purpose other than fulfilling the service. Consultant is prohibited from Data Mining, cross tabulating, monitoring NYSDOT’s Data usage and/or access, or performing any other Data Analytics other than those required within the Contract. At no time shall any Data or processes (e.g. workflow, applications, etc.), which either are owned or used by NYSDOT be copied, disclosed, or retained by the Consultant or any party related to the Consultant. The Consultant is allowed to perform industry standard back-ups of Data. Documentation of back-up must be provided to NYSDOT upon request. Consultant must comply with any and all security requirements within the Contract.

4.4 Data Location and Related Restrictions: All Data shall remain within the Continental United States (CONUS). Any Data stored, or acted upon, must be located solely in Data Centers in CONUS. Services which directly or indirectly access Data may only be performed from locations within CONUS. All Data in transit must be handled in accordance with FIPS- 140-2 or TLS1, or TLS2 (or successor).

4.4.1 Support Services: All helpdesk, online, and support services which access any Data must be performed from within CONUS. At no time will any Follow the Sun support be allowed to access Data directly, or indirectly, from outside CONUS.

5. CONSULTANT PORTABLE DEVICES

5.1 Consultant shall not place Data on any portable Device unless Device is located and remains within Consultant's CONUS Data Center.

5.2 The Data, and/or the storage medium containing the Data, shall be destroyed in accordance with applicable ITS destruction policies (ITS Policy S13-003 Sanitization/Secure Disposal and S14-003 Information Security Controls or successor) when the Consultant is no longer contractually required to store the Data.

6. TRANSFERRING OF DATA

- 6.1 General: The Consultant will not transfer Data unless directed to do so in writing by NYSDOT.
- 6.2 Transfer of Data at end of the Agreement: At the end of the Agreement, Consultant may be required to transfer Data to a new Consultant. This transfer must be carried out as specified by NYSDOT in the Agreement. This transfer may include, but is not limited to, conversion of all Data into or from an industry standard format(s) including comma/delimited files, txt files, or Microsoft standard file formats.
- 6.3 Transfer of Data; Charges: Transfer of Data shall be done at no additional charge to NYSDOT, except for the cost detailed for Task 11 in Attachment 8.
- 6.4 Transfer of Data; Contract Breach or Termination: In the case of Contract breach or termination for cause of the Contract, all expenses for the transfer of Data shall be the responsibility of the Consultant.
7. ENCRYPTION
 - 7.1 All Data must be encrypted at all times unless specifically authorized by the NYSDOT Project Coordinator. At a minimum, encryption must be carried out at the most current NYS Encryption Standard (NYS-S14-007), (or successor policy(ies) with key access restricted to NYSDOT only, unless with the express written permission of NYSDOT.
8. REQUESTS FOR DATA BY THIRD PARTIES
 - 8.1 Unless prohibited by law, Consultant shall notify the NYSDOT Project Coordinator in writing within 24 hours of any request for Data (including requestor, nature of Data requested and timeframe of response) by a person or entity other than NYSDOT, and the Consultant shall secure Written acknowledgement of such notification from the NYSDOT Project Coordinator before responding to the request for Data.
 - 8.2 Unless compelled by law, the Consultant shall not release Data without NYSDOT's prior written approval.
9. SECURITY PROCESSES
 - 9.1 Consultant shall cooperate with all reasonable NYSDOT requests for a written description of Consultant's physical/virtual security and/or internal control processes. NYSDOT shall have the right to terminate this Agreement when such a request has been denied.
10. UPGRADES, SYSTEM CHANGES AND MAINTENANCE/SUPPORT
 - 10.1 The Consultant shall give a minimum of five (5) business days advance written notice to the designated NYSDOT Project Coordinator of any upgrades or system changes that will impact services as provided in this Agreement.
11. EXPIRATION, TERMINATION OR SUSPENSION OF SERVICES
 - 11.1 Return of Data: The Consultant shall return Data in a format agreed upon within the Contract or as agreed to with the NYSDOT Project Coordinator. The Consultant must certify all Data has been removed from its system and removed from backups within timeframes established in the Contract or as agreed to with the NYSDOT Project Coordinator.

- 11.2 Suspension of Services: During any period of suspension of service, NYSDOT shall have full access to all Data at no charge. The Consultant shall not take any action to erase and/or withhold any NYSDOT Data, except as directed by the NYSDOT Project Coordinator.
- 11.3 Expiration or Termination of Services: Upon expiration or termination of the Agreement, NYSDOT shall have full access to all Data for a period of 60 calendar days at no charge. During this period, the Consultant shall not take any action to erase and/or withhold any Data, except as directed by the NYSDOT Project Coordinator.
- 12. SECURE DATA DISPOSAL
 - 12.1 When requested by the NYSDOT Project Coordinator, the Consultant shall destroy Data in all of its forms, including all back- ups. Data shall be permanently deleted and shall not be recoverable, according ITS Policy S13-003 Sanitization/Secure Disposal or successor and S14-003 Information Security Controls or successor. Certificates of Destruction, in a form acceptable to NYSDOT, shall be provided by the Consultant to the NYSDOT Project Coordinator.
- 13. ACCESS TO SECURITY LOGS AND REPORTS
 - 13.1 Upon request, the Consultant shall provide reports to NYSDOT in a format as specified in the Contract.
- 14. CONSULTANT PERFORMANCE AUDIT
 - 14.1 The Consultant shall allow NYSDOT to assess Consultant's performance by providing any materials requested in the Contract (e.g., page load times, response times, uptime, fail over time). NYSDOT may perform this Consultant performance audit with a third party at its discretion.
 - 14.2 The Consultant shall perform an independent audit of their Data Centers, at least annually, at Consultant expense. The Consultant will provide a full version of the audit report upon request by NYSDOT. The Consultant shall identify any confidential, trade secret, or proprietary information in accordance with Freedom of Information Law ("FOIL"), Article 6 of the Public Officers Law.
 - 14.3 The Office of the State Comptroller reserves its right conduct an audit of the Consultant.
- 15. PERSONNEL
 - 15.1 Background Checks: NYSDOT may require the Consultant to conduct background checks on certain Consultant staff at no charge to NYSDOT.
 - 15.2 Separation of Duties: NYSDOT may require the separation of job duties, and limit staff knowledge of Data to that which is absolutely needed to perform job duties.
- 16. BUSINESS CONTINUITY/DISASTER RECOVERY (BC/DR) OPERATIONS
 - 16.1 The Consultant shall provide a business continuity and disaster recovery plan to the NYSDOT Project Coordinator within 30 days of receiving the Notice to Proceed.
- 17. COMPLIANCE WITH FEDERAL, STATE AND LOCAL REGULATIONS

- 17.1 If required, Consultant will provide verification of compliance with specific Federal, State and local regulations, laws and IT standards that NYSDOT is required to comply with.

18. AUTHENTICATION TOKENS

- 18.1 NYSDOT may require authentication tokens for all systems. For more details, please see NYS ITS Policy S14-006 Authentication Tokens Standard or successor.

19. MODIFICATION TO CLOUD SERVICE DELIVERY TYPE AND DESCRIPTION WITHIN AN AUTHORIZED USER AGREEMENT

- 19.1 As Cloud services can be flexible and dynamic, delivery mechanisms may be subject to change. NYSDOT requires notification of any such changes to ensure security and business needs are met.
- 19.2 Any changes to the description, type of service(s), or SKU (e.g., PaaS to IaaS) must be provided to NYSDOT.
- 19.3 In addition, notification must be provided to the NYSDOT Project Coordinator for review and acceptance, prior to implementation. Any changes to the Agreement will require NYSDOT to re-assess the risk mitigation methodologies and strategies and revise the Agreement as needed.

December 2015

ATTACHMENT 2: CONSULTANT INFORMATION AND CERTIFICATIONS

(Please submit this with your Part II: Cost Proposal)

CONTRACT NUMBERS: C037856

**PROJECT TITLE: RIGHT OF WAY AND REAL ESTATE IT SYSTEM SERVICES
FOR NYSDOT**

I. CONSULTANT INFORMATION

FIRM NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____

ZIP CODE: _____ - _____

TELEPHONE: (____) _____ - _____ FAX: (____) _____ - _____

E-MAIL ADDRESS: _____

CONTACT PERSON: _____

Consultant's Federal Identification Number (FIN): _____

Consultant's NYSDOT Consultant Identification Number (CIN): _____

- Please indicate below the name, title, address, and telephone/fax numbers of the person who prepared this proposal, as well as any other individual(s) with authority to negotiate and contractually bind the offerer and also who may be contacted during the period of proposal evaluation:

Preparer's Name/Title: _____

Address: _____

Telephone: (____) _____ - _____ FAX: (____) _____ - _____

Other Authorized Individual(s):

Name/Title: _____

Address: _____

Telephone: (____) _____ - _____ FAX: (____) _____ - _____

II. PROPOSER CERTIFICATIONS

By signing below, I, _____, authorized individual
(Name)

of _____ make the following
(Firm)

certifications regarding the subject proposal:

- 365-Day Offer: This proposal is a firm offer for a 365-day period from the date of submission.
- The firm has read and will follow the procedure outlined in **Section 7.3** of the RFP if it proposes the services of a former NYSDOT employee(s).
- Vendor Responsibility: If selected for contract award, the firm will complete and submit the required Vendor Responsibility Questionnaire via the OSC VendRep portal within 10 days of notification of designation.
(http://www.osc.state.ny.us/vendrep/forms_vendor.htm)
- ST-220: If selected for contract award greater than \$100,000, the firm will complete and submit the required Forms ST-220-TD and 220-CA (Contractor Certifications) prior to negotiation with NYSDOT. You should make yourself familiar with these forms by visiting the following Web sites:
http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf (Form ST-220-CA)
http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf (Form ST-220-TD)
- 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 any agency, a Member of Congress, and 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.
- If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the 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 of January 1, 2019, bidders on New York State procurements subject to competitive bidding are required to submit a Certification on Sexual Harassment in bids. By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace, and provides annual sexual harassment prevention training to all its employees. Such policy shall, at a minimum, meet the requirements of Section 201-g of the Labor Law.

- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

Signature: _____

III. ACCEPTANCE OF CONTRACT

By signing below, I, _____, authorized individual
(Name)

of _____ hereby **certify that I have read and**
(Firm)

accept all terms and conditions contained in the Draft Contract, including

Appendix A, which is included as Attachment 1 to this Request for Proposals.

Signature: _____
(Name of Acceptor)

ATTACHMENT 3: FORM AOR

ACKNOWLEDGMENT OF RECEIPT OF RFP, MODIFICATIONS AND RESPONSES TO QUESTIONS

NAME OF PROPOSER

We hereby acknowledge receipt of the Right of Way and Real Estate IT System Services for NYSDOT (contract #C037856) Request for Proposals, dated **Month Date, Year** and subsequent responses to questions and Modifications issued by the Department, as listed below.

Add additional lines in tables below, if needed.

Modification number:	Date issued by Department:

SIGNED	
DATE	
NAME (printed or typed)	
TITLE	

ATTACHMENT 4: PROCUREMENT LOBBYING LAW COMPLIANCE

1. **Required Forms:** The consultant shall sign and e-mail/fax the following forms. These forms are part of and due with the consultant's proposal.
 - Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b) https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offers_affirmation_and_agreement_form.pdf
 - Offerer Disclosure of Prior Non-Responsibility Determinations https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/offer_disclos_prior_non.pdf

2. NYSDOT Guidelines and Procedures

Under the requirements of the State Procurement Act all communications regarding advertised projects are to be channeled through Contract Management (*Designated Contacts). Until a designation is made, communication with any other NYSDOT employee concerning this project that is determined to be an attempt to influence the procurement may result in disqualification.

Refer to "NYSDOT PROCUREMENT LOBBYING LAW GUIDELINES AND PROCEDURES" – see https://www.dot.ny.gov/main/business-center/consultants/consultants-repository/pll_gandp_v1.pdf.

3. Summary of the policy and prohibitions regarding permissible contacts

a) Contacts prior to designation:

Any communications involving an attempt to influence the procurement are only permitted with the following Designated Contact Persons:

The Contract Management Designation Contract Analyst
The Contract Management Designation Analyst Supervisor
The Contract Management Civil Rights Unit Supervisor
The Contract Management Assistant Directors
The Contract Management Director

These are some communications exempted from this restriction:

Participation in a pre-proposal conference.

Protests, complaints of improper conduct or misrepresentation

If any other NYSDOT employee is contacted and they believe a reasonable person would infer that the communication was intended to influence the procurement, the contact must be reported by the NYSDOT employee. If the Department determines an impermissible contact was made, that offerer cannot be awarded the contract. A second violation would lead to a four-year bar on the award of public contracts to the offerer.

b) Contacts after designation

NYSDOT identifies its primary negotiation contacts. The designated contacts include:

The Contract Management Designation Contract Analyst
The Contract Management Designation Analyst Supervisor
The Contract Management Civil Rights Unit Supervisor
The Contract Management Assistant Directors
The Contract Management Director
The Consultant Management Bureau consultant job manager

The Consultant Management Bureau consultant job manager's immediate supervisor

The law does not limit who may be contacted during the negotiation process. However, if any NYSDOT employee is contacted and they believe a reasonable person would infer that the communication was intended to influence the procurement, the contact must be reported by the NYSDOT employee.

c) Information Required from Offerers that contact NYSDOT staff, prior to contract approval by the Office of the State Comptroller:

The individuals contacting NYSDOT should refer and shall be prepared to provide the following information, either by e-mail or fax as directed by NYSDOT:

Person's name, firm person works for, address of employer, telephone number, occupation, firm they are representing, and whether owner, employee, retained by or designated by the firm to appear before or contact the NYSDOT.

d) Applicability to an executed contract:

Restrictions similar to those described above apply to approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved by the comptroller, as applicable), renewal or extension of a procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the offerer. The staff noted above as well as the project manager and consultant manager are considered designated contact persons. The Department may identify other contact persons for each of these processes.

4. Rules and regulations and more information on this law, please visit:

<https://ogs.ny.gov/acpl> (Advisory Council on Procurement Lobbying)

For more information, go to NYSDOT's Web Site at <http://www.dot.ny.gov> or contact:

Micheleen Gregware
NYSDOT Contract Management
50 Wolf Road, 6th Floor
Albany, New York 12232
E-mail: Micheleen.Gregware@dot.ny.gov
Tele: (518) 485-8620

ATTACHMENT 5: CONSULTANT DISCLOSURE LEGISLATION FORMS A & B

OSC Use Only:

Reporting Code:

Category Code:

Date Contract Approved:

FORM A**State Consultant Services – Contractor's Planned Employment
From Contract Start Date Through The End Of The Contract Term**

State Agency Name: Transportation

Agency Code: DOT01

Contractor Name:

Contract Number: C037856

Contract Start Date: / /

Contract End Date: / /

O*Net Employment Category	Number of Employees	Number of hours to be worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report:

Title:

Phone #:

Preparer's Signature:

Date Prepared: / /

(Use additional pages, if necessary)

Page of

FORM B

OSC Use Only:

Reporting Code:

Category Code:

State Consultant Services
Contractor's Annual Employment Report
Report Period: April 1, to March 31,

Contracting State Agency Name: Transportation

Agency Code: DOT01

Contract Number: C037856

Contract Term to

Contractor Name:

Contractor Address:

Description of Services Being Provided: Right of Way & Real Estate IT System Services for NYSDOT

Scope of Contract (Choose one that best fits):

Analysis ☐ Evaluation ☐ Research ☐ Training ☐

Data Processing ☐ Computer Programming ☐ Other IT consulting ☐

Engineering ☐ Architect Services ☐ Surveying ☐ Environmental Services ☐

Health Services ☐ Mental Health Services ☐

Accounting ☐ Auditing ☐ Paralegal ☐ Legal ☐ Other Consulting ☒

O*NET Employment Category Number and O*NET Job Title	Number of Employees	Number of Hours Worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report:

Preparer's Signature: _____

Title: _____ Phone #: _____

Date Prepared: / /

Page

of

Use additional pages if necessary)

ATTACHMENT 6: NON-COLLUSIVE BIDDING CERTIFICATION

NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY
SECTION 139-D OF THE STATE FINANCE LAW

SECTION 139-D, Statement of Non-Collusion in bids to the State:

BY SUBMISSION OF THIS BID, BIDDER AND EACH PERSON SIGNING ON BEHALF OF BIDDER CERTIFIES, AND IN THE CASE OF JOINT BID, EACH PARTY THERETO CERTIFIES AS TO ITS OWN ORGANIZATION, UNDER PENALTY OF PERJURY, THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF:

[1] The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and

[3] No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FOREGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:

[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]

Subscribed to under penalty of perjury under the laws of the State of New York, this _____ day of _____, 20____ as the act and deed of said corporation or partnership.

NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY
SECTION 139-D OF THE STATE FINANCE LAW

IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:
NAMES OF PARTNERS OR PRINCIPALS LEGAL RESIDENCE

_____	_____
_____	_____
_____	_____
_____	_____

IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:
NAME LEGAL RESIDENCE

_____	_____
President:	
_____	_____
Secretary:	
_____	_____
Treasurer:	
_____	_____
President:	
_____	_____
Secretary:	
_____	_____
Treasurer:	

NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY
SECTION 139-D OF THE STATE FINANCE LAW

Identifying Data

Potential Contractor: _____

Address: _____
Street

City, Town, etc.

Telephone: _____ Title _____

If applicable, Responsible Corporate Officer

Name: _____ Title _____

Signature: _____

Joint or combined bids by companies or firms must be certified on behalf of each participant.

Legal name of person, firm or corporation

Legal name of person, firm or corporation

By _____
Name

Title

Name
Title

Address:

Street

City State

Address: _____
Street

City
State

ATTACHMENT 7: VENDOR ASSURANCE OF NO CONFLICT OR DETRIMENTAL EFFECT

The Firm offering to provide services pursuant to this [RFP/Contract], as a contractor, joint venture contractor, subcontractor, or consultant, attests that its performance of the services outlined in this [RFP/Contract] does not and will not create a conflict of interest with nor position the Firm to breach any other contract currently in force with the State of New York.

Furthermore, the Firm attests that it will not act in any manner that is detrimental to any State project on which the Firm is rendering services. Specifically, the Firm attests that:

2. The fulfillment of obligations by the Firm, as proposed in the response, does not violate any existing contracts or agreements between the Firm and the State;
3. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not create any conflict of interest, or perception thereof, with any current role or responsibility that the Firm has with regard to any existing contracts or agreements between the Firm and the State;
4. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not compromise the Firm's ability to carry out its obligations under any existing contracts between the Firm and the State;
5. The fulfillment of any other contractual obligations that the Firm has with the State will not affect or influence its ability to perform under any contract with the State resulting from this RFP;
6. During the negotiation and execution of any contract resulting from this RFP, the Firm will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
7. In fulfilling obligations under each of its State contracts, including any contract which results from this RFP, the Firm will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
8. No former officer or employee of the State who is now employed by the Firm, nor any former officer or employee of the Firm who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate section 73(8)(a) of the State Ethics Law; and
9. The Firm has not and shall not offer to any employee, member or director of the State any gift, whether in the form of money, service, loan, travel, entertainment,

hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

Firms responding to this [RFP/Contract] should note that the State recognizes that conflicts may occur in the future because a Firm may have existing or new relationships. The State will review the nature of any such new relationship and reserves the right to terminate the contract for cause if, in its judgment, a real or potential conflict of interest cannot be cured.

Name, Title:

Signature: _____ Date: _____

This form must be signed by an authorized executive or legal representative.

ATTACHMENT 8: EXECUTIVE ORDER 177 CERTIFICATION

This Certification must be completed and returned with the executed contract documents.

Executive Order 177 Certification

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Proposer/Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

Vendor: _____

By [signature]: _____

Name [print]: _____

Title: _____

Date: _____ , 20____

ATTACHMENT 9: FORM M/WBE EEO MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

(Submit original with Executed Contract Signature pages)

Contract Number _____

Contract Description: _____

M/WBE AND EEO POLICY STATEMENT

I, _____, of _____ (awardee/consultant) agree to adopt the following policies with respect to the project being developed or services rendered.

MWBE

This organization will, and will cause its contractors and subcontractors to, take good faith actions to achieve the M/WBE contract participation goals set by the State for that area in which the State-funded project is located, by taking the following steps:

1. Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
2. Request a list of State-certified M/WBEs from NYSDOT and solicit bids from them directly.
3. Ensure that plans, specifications, requests for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
4. Where feasible, divide the work into smaller portions to enhance M/WBE participation and encourage the formation of joint ventures and other partnerships among M/WBE contractors.
5. Document and maintain records of bid solicitation, including those to M/WBEs, and the results thereof. The Consultant will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
6. Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and if legally permissible, that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EEO

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its efforts to employ and utilize minority group members and women in its work force on State contracts.
- (b) This organization shall state in all solicitations or advertisements for employees in the performance of the State contract, that all qualified applicants will be afforded equal opportunities without discrimination because of race, creed, color, national origin, sex, disability or marital status.
- (c) At the request of the contracting agency, this organization shall request that each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (d) The Consultant shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Consultant and subconsultants/subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subconsultant/subcontractor as to work in connection with the State Contract.

Agreed to this _____ day of _____, 20____

By _____

Print: _____ Title: _____

_____ is designated as the Minority Business Enterprise Liaison
(Printed Name of Designated Liaison)

Total Committed M/WBE Contract Participation

_____ percent Minority and Women's Business Enterprise Participation

_____ percent Minority Business Enterprise Participation

_____ percent Women's Business Enterprise Participation

(Authorized Representative Signature)

Title: _____

Date: _____

ATTACHMENT 10: DBE PARTICIPATION INFORMATION – *Not Applicable*

In accordance with the Code of Federal Regulations (CFR), Title 49, Part 26, NYSDOT is required to encourage Proposers to utilize DBE firms in procurements that receive federal funds.

Please complete the following table for the prime firm and all subconsultants (consultant team composition): please identify each firm's legal name, checking if they are a certified DBE by utilizing the NYSUCP DBE Directory, and indicating each firm's percentage of the total salary for the contract. Please keep in mind that only NYSUCP certified DBEs are eligible to count toward attainment of this federally-funded procurement with a DBE participation goal.

Further, participation by a certified DBE prime consultant will count toward DBE participation goal attainment.

If the combined percentage of total contract value for all proposed, certified DBEs is less than the DBE Participation Goal set for this contract, then the proposing prime firm is required to fill out and submit the **Participation Solicitation Log (Attachment 10a)**, and the **Goal Attainment Explanation Letter**. Further, prime consultants certified as a DBE who propose to meet the Department's DBE participation goal via their meaningful participation, are required to fill out and submit the **Participation Solicitation Log (Attachment 10a)** if their outreach efforts result in proposed DBE subconsultant(s).

Please provide a copy of the firm's DBE letter from a NYSUCP certifying partner with your Part II proposal.

Contract#: _____

Firm Legal Name	NYSUCP Certified DBE		% of Total Contract Value
	DBE	None	
A. Prime Consultant			
B. Sub-Consultants			
Total			100%

ATTACHMENT 10a: DBE SUBCONSULTANT PARTICIPATION SOLICITATION LOG – *Not Applicable*
(Good Faith Effort Documentation)

CONTRACT NO. _____		PARTICIPATION GOALS (SELECT ONE) DBE% _____		PAGE NUMBER ____ OF ____	
PRIME FIRM NAME/ADDRESS/ZIP CODE		CONTACT PERSON		TELEPHONE NUMBER (INCLUDE AREA CODE) E-MAIL	
SOLICITED COMPANY NAME AND CONTACT PERSON	TELEPHONE (WITH AREA CODE)	FEDERAL EMPLOYER ID #	WORK TYPES BEING SOLICITED (enter work types or CUF)	TYPES AND DATES OF CONTACTS	CONTACT RESULT(S) CODE*

*See Solicitation Log Instructions listed in Attachment 12: Solicitation Log Instructions

ATTACHMENT 11: M/WBE/SDVOB PARTICIPATION INFORMATION

Please complete the following table for the prime firm and all subconsultants (consultant team composition): please identify each firm's legal name, checking if they are an Empire State Development (ESD) certified MBE and/or a ESD certified WBE or SDVOB, and indicating each firm's percentage of the total salary for the contract. Please keep in mind that only ESD certified M/WBE/SDVOB prime consultants and/or ESD certified M/WBE/SDVOB subconsultants are eligible to participate toward attainment of this state-funded procurement.

Further, participation by a certified M/WBE/SDVOB prime consultant as well as certified MBE and/or WBE subconsultants may count towards the M/WBE/SDVOB participation goal.

If the combined percentage of total salary for all certified M/WBE/SDVOBs proposed is less than the M/WBE/SDVOB participation goals, then the proposing prime firm is required to fill out and submit the **Participation Solicitation Log (Attachment 11a;** one for each goal not attained), **and** is required to submit a **M/WBE/SDVOB Goal Attainment Explanation Letter.**

Contract#: C037856

Firm Legal Name	NYS ESD Certified MBE/WBE/SDVOB				% of Total Contract Value
	MBE	WBE	SDVOB	NONE	
A. Prime Consultant					
B. Sub-Consultants					
Total					100%

ATTACHMENT 11a: SUBCONSULTANT PARTICIPATION SOLICITATION LOG
(Good Faith Effort Documentation)

CONTRACT NO. C037856		PARTICIPATION GOALS (SELECT ONE) MBE % _6_ WBE % _13_ SDVOB%_6_		PAGE NUMBER ____ OF ____	
PRIME FIRM NAME/ADDRESS/ZIP CODE		CONTACT PERSON		TELEPHONE NUMBER (INCLUDE AREA CODE)	
				E-MAIL	
SOLICITED COMPANY NAME AND CONTACT PERSON	TELEPHONE (WITH AREA CODE)	FEDERAL EMPLOYER ID #	WORK TYPES BEING SOLICITED (enter work types or CUF)	TYPES AND DATES OF CONTACTS	CONTACT RESULT(S) CODE*

*See Solicitation Log Instructions listed in Attachment 12: Solicitation Log Instructions

ATTACHMENT 12: SOLICITATION LOG INSTRUCTIONS

(Good Faith Effort Documentation)

To be deemed responsive to this solicitation, Consultants whose proposed D/M/WBE/SDVOB participation does not meet the established participation goal must document and report their efforts to solicit participation by certified D/M/WBE/SDVOB in this Non-Architecture/Non-Engineering contract. The **Solicitation Log** is used for this purpose.

PLEASE NOTE: **For RFP's with a DBE goal, only participation by NYSUCP certified DBE prime consultants as well as NYSUCP certified DBE subconsultants may count toward goal attainment. For RFP's with MBE, WBE goals and/or SDVOB goals, only consultants or subconsultants certified by New York State Empire State Development and/or New York State Office of General Services SDVOB Program may count toward goal attainment.**

Guidance concerning Good Faith Efforts in meeting D/M/WBE/SDVOB participation goals is located at the end of this section.

The log is to be filled out and submitted with the proposing firm's Cost and Contract Proposal. In order for a proposal to be determined as responsive when the D/M/WBE/SDVOB participation goal is not attained at all or only partially attained, then the proposer must complete all sections of this form and submit a **Solicitation Log**, along with a **Goal Attainment Explanation Letter**, documenting the firm's Good Faith Effort. A separate Solicitation Log must be submitted for each Participation Goal established in the RFP.

***** DBE CERTIFICATION IS A FEDERAL PROGRAM CERTIFICATION. *****
IT IS SEPARATE AND DISTINCT FROM THE NEW YORK STATE MBE & WBE or SDVOB PROGRAMs. PLEASE DO NOT CONFUSE THE TWO. FIRMS WITH QUESTIONS REGARDING THESE PROGRAMS ARE ENCOURAGED TO SUBMIT WRITTEN QUESTIONS

CONTRACT NO: Enter NY State DOT contract number (Example: C012345).

PARTICIPATION GOAL: Enter applicable D/M/WBE/SDVOB participation goal percentage as stated in the proposal.

PAGE NO.: Enter 1 of 1; or 1 of 2 and 2 of 2; etc. Use additional forms as needed.

PRIME NAME/ADDRESS/ZIP CODE: Enter name of the Prime Consultant, its address and zip code.

CONTACT PERSON: Enter the name of the person *your* firm has designated as the authorized contact person for this solicitation.

CONTACT PERSON TELEPHONE AND E-MAIL: Enter area code, phone number and e-mail address for the person *your* firm has designated as the authorized contact person for this

solicitation.

MBE/WBE/ CONSULTANTS SOLICITED:

SOLICITED COMPANY NAME AND CONTACT PERSON: Enter name of solicited firm and name of the individual associated with the firm to whom the solicitation inquiry was sent.

TELEPHONE (With Area Code): Enter TELEPHONE number of the solicited firm.

FEDERAL EMPLOYER ID #: Enter the Federal Employer Identification Number of the solicited firm.

WORK TYPE(S) BEING SOLICITED: Enter the work type(s) or Commercial Useful Function for which this firm has been solicited in connection with the Scope of Services for this contract. NOTE: Work type codes are provided for every certified firm listed in the DBE Registry. Commodity type codes are provided for every certified firm listed in the ESD M/WBE Registry.

TYPES AND DATES OF CONTACT: Enter dates on which your firm contacted the solicited firm, either by mail (date solicitation sent), telephone (including date and time of call) or other person-to-person contacts. Identify the type of contact by prefacing each date with ‘M’ if a mail contact; ‘T’ if a telephone call; and ‘D’ if a direct meeting with the firm.

CONTACT RESULT(S): Enter the code(s) which indicates the result(s) of your solicitation.

***** USE ADDITIONAL PAGES AS NEEDED *****

A description of the codes to use is as follows:

CODE DESCRIPTION:

- 1 This firm is unavailable to participate in the contract for the reason(s) stated on the D/M/WBE/SDVOB Solicitation Response. (Attach explanation to the Log.)
- 2 This firm is no longer in business. (NOTE: If this action is checked, attach your explanation as to why the solicitation was sent to the firm and how evidence that it was no longer in business was obtained. Attach the returned envelope showing that it was undeliverable, for instance.
- 3 The soliciting Prime Consultant was unable to reach this firm after having a telephone conversation to follow-up on the participation solicitation inquiry. (NOTE: Indicate In the Types and Dates of Contact column the dates and times at which follow-up was attempted.)
- 4 This firm did not respond to repeated telephone messages. (NOTE: Indicate in the Types and Dates of Contact column the dates and times at which messages were left).

Guidance Concerning Good Faith Efforts in Meeting D/M/WBE/SDVOB Participation Goals in Federally-Funded Contracts

The following is a list of types of actions that demonstrate good faith efforts in obtaining D/M/WBE/SDVOB participation. This list is not exclusive or exhaustive. The bidder must show that it took all necessary and reasonable steps to achieve a D/M/WBE/SDVOB goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient D/M/WBE/SDVOB participation, even if they were not fully successful.

- Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, utilizing the NYSUCP DBE Directory – <http://www.nysucp.net/> or the ESD M/WBE Directory -<http://www.esd.ny.gov/MWBE.html>) the interest of all certified D/M/WBEs , or the NYS Office of General Services list of certified SDVOBs at <http://ogs.ny.gov/core/sdvoba.asp>, who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the D/M/WBE/SDVOBs to respond to the solicitation. The bidder must determine with certainty if the D/M/WBE/SDVOBs are interested by taking appropriate steps to follow up initial solicitations.
- Selecting portions of the work to be performed by D/M/WBE/SDVOBs in order to increase the likelihood that the D/W/BBE/SDVOB goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate D/M/WBE/SDVOB participation, even when the bidder might otherwise prefer to perform these work items with its own forces.
- Providing interested D/M/WBE/SDVOBs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- Negotiating in good faith with interested D/M/WBE/SDVOBs – it is the bidder's responsibility to make a portion of the work available to D/M/WBE/SDVOB subcontractors and suppliers and to select those portions of the work or material needs consistent with the available D/M/WBE/SDVOB subcontractors and suppliers, so as to facilitate D/M/WBE/SDVOB participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of D/M/WBE/SDVOBs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for D/M/WBE/SDVOBs to perform the work.
- A bidder using good business judgment should consider a number of factors in negotiating with subcontractors, including D/M/WBE/SDVOB subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding a D/M/WBE/SDVOBs is not in itself sufficient reason for failure to meet the contract D/M/WBE/SDVOB goal. Also, the ability or desire to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts.

- Do not reject D/M/WBE/SDVOBs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union versus non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- Making efforts to assist interested D/M/WBE/SDVOBs in obtaining bonding, lines of credit, or insurance as required by the recipient or contract.
- Making efforts to assist interested D/M/WBE/SDVOBs in obtaining necessary equipment, supplies, materials or related assistance or services.
- Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of D/M/WBE/SDVOBs.

ATTACHMENT 13: NEW YORK BUSINESS REPORTING

Encouraging Use of New York State Businesses in Contract Performance

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders/proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below and if answered in the affirmative, completing and submitting the following table for all firms (prime consultant and all subconsultants) participating in your proposal. The definition of 'NYS Business' is: 'Any firm with a business address which lies within the borders of New York State from which location the proposed services from this firm shall be provided under this contract'. Indicate whether each proposed firm is classified as a NYS Business, the total dollar amount attributable to each firm, the total proposed contract cost, and the NYS business address of each firm.

Contract Number: C037856

Will New York State Businesses be used in the performance of this contract?

Yes _____

No _____

Firm Legal Name	NYS Business? (Y or N)	% of Total Proposed Contract Cost	NYS Business Address
A. Prime Consultant			
		\$	
B. Sub-Consultants			
		\$	
		\$	
		\$	
		\$	
Total Proposed Contract Cost:		\$	

ATTACHMENT 14: DIVERSITY PRACTICES QUESTIONNAIRE

I, _____, as _____ (title) of _____ firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? Yes or No

If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.

2. What percentage of your company's gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-venturers, partners or other similar arrangement for the provision of goods or services to your company's clients or customers?

3. What percentage of your company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company's clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?³

4. Does your company provide technical training⁴ to minority- and women-owned business enterprises? Yes or No

If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

5. Is your company participating in a government approved minority and women-owned business enterprise mentor-protégé program?

If Yes, identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company's commitment to the governmental mentoring program.

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? Yes or No

If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

³ Do not include onsite project overhead.

⁴ Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program? Yes or No
If Yes, provide documentation of program activities and a copy of policy or program materials.
8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority- and women-owned business enterprises if selected as the successful respondent? Yes or No
If Yes, complete the attached Utilization Plan (Attachment 7).

All information provided in connection with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature of
Owner/Official

Printed Name of
Signatory

Title

Name of Business

Address

City, State, Zip

STATE OF _____
COUNTY OF _____) ss:

On the _____ day of _____, 201_, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

Notary Public

ATTACHMENT 15: KEY PERSONNEL RESUME AND REFERENCES

Instructions:

- Complete Attachment 15 for each Key Personnel title identified in the RFP.
- Attachment 15 shall not exceed three pages in length for each Key Personnel.
- Proposer's may expand the boxes as necessary.
- The term "Client" below refers to the past project owner. "Client" is NOT a Prime Contractor where the proposing firm acted in the capacity as a Subcontractor.

1. Personnel Name and Title:	
2. Title Assigned for this Project:	
3. Firm working for on this Project:	
4. Current Employment Status:	<input type="checkbox"/> Employed by Firm identified #3 above <input type="checkbox"/> Employed by a different Firm <input type="checkbox"/> Unemployed
5 Years of Relevant Experience	
6. Description of Relevant Experience:	
7. Certifications/Licenses:	
8. Education:	
Past Project Experience	Complete below for a maximum of five past projects
Project Description (include contract number where appropriate):	
Client Name:	
Client Contact Information (including contact name, phone number, and e-mail address):	
Description of person's role and responsibilities during project:	
Project Description (include contract number where appropriate):	
Client Name:	
Client Contact Information (including contact name, phone number, and e-mail address):	
Description of person's role and responsibilities during project:	
Project Description (include contract number where appropriate):	
Client Name:	
Client Contact Information (including contact name, phone number, and e-mail address):	
Description of person's role and responsibilities during project:	

Project Description (include contract number where appropriate):	
Client Name:	
Client Contact Information (including contact name, phone number, and e-mail address):	
Description of person's role and responsibilities during project:	
Project Description (include contract number where appropriate):	
Client Name:	
Client Contact Information (including contact name, phone number, and e-mail address):	
Description of person's role and responsibilities during project:	

ATTACHMENT 16: FUNCTIONAL REQUIREMENTS

Attachment 16 – Functional Requirements can be found at: <https://www.dot.ny.gov/doing-business/opportunities/consult-opportunities>

ATTACHMENT 17: INTERFACE REQUIREMENTS

Attachment 17 – Interface Requirements can be found at: <https://www.dot.ny.gov/doing-business/opportunities/consult-opportunities>

ATTACHMENT 18: FIRM EXPERIENCE

Attachment 18 – Firm Experience can be found at: <https://www.dot.ny.gov/doing-business/opportunities/consult-opportunities>

ATTACHMENT 19: PROJECT PLAN & STAFFING

Attachment 19 – Project Plan & Staffing can be found at: <https://www.dot.ny.gov/doing-business/opportunities/consult-opportunities>

ATTACHMENT 20: OITS TECHNOLOGY SERVICES AND STANDARDS OVERVIEW

Attachment 20 – OITS Technology Services and Standards Overview can be found at: <https://www.dot.ny.gov/doing-business/opportunities/consult-opportunities>

ATTACHMENT 21: DATA CONVERSION

Attachment 21 – Data Conversion can be found at: <https://www.dot.ny.gov/doing-business/opportunities/consult-opportunities>

ATTACHMENT 22: SYSTEM TESTING & ACCEPTANCE

Attachment 22 – System Testing & Acceptance can be found at: <https://www.dot.ny.gov/doing-business/opportunities/consult-opportunities>

ATTACHMENT 23: SUPPORT & MAINTENANCE

Attachment 23 – Support & Maintenance can be found at: <https://www.dot.ny.gov/doing-business/opportunities/consult-opportunities>

ATTACHMENT 24: COST PROPOSAL

Attachment 24 – Cost Proposal can be found at: <https://www.dot.ny.gov/doing-business/opportunities/consult-opportunities>

ATTACHMENT 25: USE CASES

Attachment 25 – Use Cases can be found at: <https://www.dot.ny.gov/doing-business/opportunities/consult-opportunities>

ATTACHMENT 26: ITS RELEASE & DEPLOYMENT MANAGEMENT PROCESS

Attachment 26 – ITS Release & Deployment Management Process can be found at: <https://www.dot.ny.gov/doing-business/opportunities/consult-opportunities>

ATTACHMENT 27: ITS EXPERIENCE DESIGN APPROACH

Attachment 27 – ITS Experience Design Approach can be found at: <https://www.dot.ny.gov/doing-business/opportunities/consult-opportunities>

ATTACHMENT 28: ITS TECHNICAL SERVICES & STANDARDS OVERVIEW – PROJECT & APPLICATION LIFECYCLE STANDARDS

ITS Technical Services & Standards Overview – Project & Application Lifecycle Standards can be found at: <https://www.dot.ny.gov/doing-business/opportunities/consult-opportunities>