

ORDINANCE NO. 1446

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH JARRETT WALKER & ASSOCIATES, LLC OF PORTLAND, OREGON FOR PROVIDING PROFESSIONAL SERVICES TO FACILITATE COMMUNITY ENGAGEMENT AND DEVELOP A TRANSIT MASTER PLAN FOR CANBY AREA TRANSIT; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby on behalf of Canby Area Transit received grant contract no. 30111 from ODOT – Rail and Public Transit Division for \$60,000 in (49 U.S.C 5305) funds to provide 80% of the funding to engage the public and develop a Transit Master Plan for Canby Area Transit; and

WHEREAS, City issued a Request for Proposal (RFP) on May 18, 2016 to solicit proposals from qualified firms to provide professional services to facilitate community and stakeholder engagement and develop a Transit Master Plan for Canby Area Transit; and

WHEREAS, the City of Canby received proposals from four (4) potential companies as follows on or before 5:00 p.m. on June 15, 2016:

Company Name:

Jarrett Walker & Associates, LLC

Kittelson & Associates, Inc.

LSC Transportation Consultants, Inc.

Nelson Nygaard Consulting Associates, Inc.

WHEREAS, following an interview process, a three (3) member Selection Committee met on June 21, 2016, to score the proposals in accordance with the Evaluation Criteria detailed in the RFP.

WHEREAS, Jarrett Walker & Associate received the top score of 296 and was identified unanimously by the Selection Committee as the most able, experienced and cost efficient proposer; now therefore


THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The Mayor and the City Administrator are hereby authorized and directed to make, execute and declare in the name of the City of Canby and on its behalf, an appropriate contract with Jarrett Walker & Associates of Portland, Oregon to

provide professional services to facilitate community and stakeholder engagement and develop a Transit Master Plan for Canby Area Transit. A copy of said contract is attached hereto as Exhibit "A" and by this reference incorporated herein.

Section 2. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to complete this project as soon as possible, an emergency is hereby declared to exist and this ordinance shall therefore take effect immediately upon its enactment after final reading.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, September 7, 2016, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, September 21, 2016 commencing at the hour of 7:30 p.m. in the Council Chambers located at 155 NW 2nd Avenue, Canby, Oregon.



Kimberly Scheafer, MMC
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on September 21, 2016 by the following vote:

YEAS 6

NAYS 0



Brian Hodson, Mayor

ATTEST:



Kimberly Scheafer, MMC
City Recorder

PERSONAL SERVICES AGREEMENT

TMP2016

THIS AGREEMENT is made and entered into as of the date first indicated on the signature page, by and between the CITY OF CANBY, Canby Oregon, a municipal corporation of the State of Oregon, hereinafter called "City" and Jarrett Walker & Associates, hereinafter called "Contractor".

WHEREAS, Contractor specializes in providing technical transit planning with public engagement; has led transit network design, stakeholder outreach and policy development efforts; conducted trainings and workshops on transit network design and policy; and has led consulting teams in both local and regional transit planning projects; and

WHEREAS, City issued a Request for Proposal (RFP) on May 18, 2016 to solicit proposals from qualified firms to provide professional services to facilitate community and stakeholder engagement and develop a Transit Master Plan for Canby Area Transit; and Contractor submitted its proposal dated June 15, 2016 in response thereto; and Contractor was selected from a field of qualified competitors; and

WHEREAS, City has determined that Consultant is qualified and capable of performing the services outlined in the RFP; and Consultant has presented a work plan and cost proposal; under the terms and conditions set forth hereafter;

THEREFORE, the parties agree as follows:

1. Scope of Services. Contractor's services under this Agreement are set forth in Exhibit "A", attached hereto.
2. Contractor Identification. Contractor shall furnish to City its employer identification number as designated by the Internal Revenue Service, or Contractor's Social Security Number, as City deems applicable. **Contractor understands it is required to obtain a City of Canby Business License for conducting business in the City. Contractor agrees to obtain a Canby Business License prior to commencing work under this contract.**
3. Compensation:
 - A. City agrees to pay Contractor according to the proposed rate schedule submitted with the Contractor's proposal. See Exhibit "A" attached hereto. Contractor agrees that \$70,000 is the not to exceed price of this contract, without prior written approval from the City.
 - B. City agrees to pay Contractor within 30 days after receipt of Contractor's itemized statement reporting completed work. Amounts disputed by the City may be withheld pending settlement.
 - C. City certifies that sufficient funds are available and authorized for expenditure to finance costs of the Agreement.
4. Contractor is Independent Contractor.
 - A. Contractor's services shall be provided under the general supervision of the City

Administrator. Contractor shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under Paragraph #3 of this Agreement.

- B. Contractor certifies that it is either a carrier-insured employer or a self-insured employer as provided in Chapter 656 of the Oregon Revised Statutes.
- C. Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City Employee has an interest, will or has received any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this contract, except as specifically declared in writing.
- 5. **Subcontractors and Assignment. Contractor shall neither subcontract any of the work, nor assign any rights acquired hereunder, without obtaining prior written approval from City. City, by this Agreement, incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any subcontract between Contractor and subcontractor shall require the subcontractor to comply with all terms and conditions this agreement as well as applicable OSHA and FTA regulations and requirements.**
- 6. Work is Property of City. All work performed by Contractor under this Agreement shall be the property of the City. City agrees that the Contractor may use its work in other assignments if all City of Canby data and references are removed.
- 7. Term.
 - A. This Agreement may be terminated by:
 - 1. Mutual written consent of the parties.
 - 2. Either party, upon thirty (30) days written notice to the other, delivered by certified mail or in person.
 - 3. City, effective upon deliver of written notice to Contractor by certified mail, or in person, under any of the following:
 - a. If Contractor fails to provide services called for by this Agreement within the time specified or any extension thereof.
 - b. If Contractor fails to abide by the terms of this Agreement.
 - c. If services are no longer required.
- 8. Professional Standards. Contractor shall be responsible to the level of competency presently maintained by others practicing the same type of work in City's community, for the professional and technical soundness, accuracy and adequacy of all work and materials furnished under this authorization.

By entering into this agreement, contractor represents and warranties that they have complied with the tax laws of the State of Oregon and the City of Canby. Further, for the duration of this contract, Contractor promises to continue to comply with said State and local tax laws. Any failure to comply with tax laws will be considered a default of this contract and could result in the immediate termination of this agreement and/or other sought damages or other such relief under applicable law.

9. Insurance. Insurance shall be maintained by the Contractor with the following limits:

A. For Comprehensive General Liability Insurance, Contractor shall provide a Certificate of Insurance naming the City of Canby as an additional named insured showing policy limits of not less than \$1,000,000 Combined Single Limit for Bodily Injury/Property Damage on an occurrence basis.

B. For Automobile Insurance, Contractor shall provide a Certificate of Insurance naming the City of Canby as an additional named insured showing policy limits of not less than \$1,000,000 Combined Single Limit for Bodily Injury/Property Damage on an occurrence basis for any vehicle used for City business or use otherwise related to this contract.

C. For Professional Liability—errors and omissions—a \$1,000,000 Combined Single Limit for Bodily Injury/Property Damage limit. **(Required for Architects, Appraisers, Attorneys, Consultants, Engineers, Planners, Programmers, etc.)**. For purposes of professional liability, Contractor shall provide proof of a Certificate of Insurance naming the City of Canby as a Certificate Holder.

D. For Worker's Compensation, Contractor shall provide a Certificate of Insurance naming the City of Canby as a Certificate Holder showing Worker's Compensation Insurance with statutory limits of coverage.

Procuring of such required insurance at the above-stated levels shall not be construed to limit the Contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, loss, or related costs caused by or related to Contractor's negligence or neglect connected with this Agreement.

10. Legal Expense. In the event legal action is brought by City or Contractor against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for attorneys fees, costs, and expenses as may be set by the court both at trial and all appeals there from.

11. Modifications. Any modification of the provisions of this Agreement shall be in writing and signed by the parties.
12. Notices. Any notice, bills, invoices, reports, or other documents required by this Agreement shall be sent by the parties by United States mail, postage paid, electronically, faxed, or personally delivered to the address below. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing unless sooner received.
13. Entire Agreement. This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.
14. Savings Clause. Should any provision of this Agreement be found to be in conflict with any federal or Oregon state law, or final controlling decision of any Court of competent jurisdiction, or ruling or decision of any controlling administrative agency, all other provisions of this Agreement shall remain in full force and effect.
15. Indemnification: Contractor shall defend, save, hold harmless, and indemnify the authorized purchaser, the Federal Transportation Administration, the State of Oregon and its officers, employees and agents from and against all claims, suits, actions, proceedings, losses, damages, liabilities, awards and costs of every kind and description (including reasonable attorney's fees and expenses at trial, on appeal and in connection with any petition for review) (collectively, "claim") which may be brought or made against any authorized purchaser, the state, or their agents, officials, employees and arising out of or related to (i) any personal injury, death or property damage caused by any alleged act, omission, error, fault, mistake or negligence of contractor, its employees, agents, related to this contract, (ii) any act or omission by contractor that constitutes a material breach of this contract, including without limitation any breach of warranty, or (iii) the infringement of any patent, copyright, trade secret or other proprietary right of any third party by delivery or use of the goods. Authorized purchaser or state shall promptly notify contractor in writing of any claim of which authorized purchaser or state becomes aware. Contractor's obligation under this section shall not extend to any claim primarily caused by (i) the negligent or willful misconduct of authorized purchaser, or (ii) authorized purchaser's modification of goods without contractor's approval and in a manner inconsistent with the purpose and proper usage of such goods.

However, the Oregon Attorney General must give written authorization to any legal counsel purporting to act in the name of, or represent the interests of, the State or its officers, employees and agents prior to such action or representation. Further, the State, acting by and through its department of justice, may assume its own defense, including that of its officers, employees and agents, at any time when in the State's sole discretion it determines that (i) proposed counsel is prohibited from the particular representation contemplated; (ii) counsel is not adequately defending or able to defend the interests of

the State, its officers, employees or agents; (iii) important governmental interests are at stake; or (iv) the best interests of the State are served thereby. Contractor's obligation to pay for all costs and expenses shall include those incurred by the state in assuming its own defense and that of its officers, employees, or agents under (i) and (ii) above.

16. Federal Terms and Conditions. This project is funded in part with grant funds from the Federal Transit Administration via contract with the Oregon Department of Transportation's Rail and Public Transit Division which requires third party contractors to comply with the federal terms and conditions detailed in Exhibit "B" attached hereto. The Contractor agrees to comply with all applicable federal regulations.

CITY: Rick Robinson, City Administrator
City of Canby
PO Box 930
Canby, OR 97013

CONTRACTOR: Jarrett Walker & Associates
1327 SE Tacoma Street, #166
Portland, OR 97202

Please submit invoices to: Attn: Julie Wehling
City of Canby
PO Box 930
Canby, OR 97013
wehlingj@ci.canby.or.us

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers.

CONTRACTOR:

CITY OF CANBY


By: Authorized Agent of Contractor


By: City Administrator

Michelle Poyourow
Printed Name

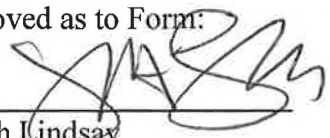
Richard W. Robinson
Printed Name

8/5/16
Date:

9/21/2016
Date:

Subcontractors will be used Yes No (If Yes, please complete List of Subcontractors attached to this Agreement)

Approved as to Form:



Joseph Lindsay
City Attorney


11/6/15

LIST OF SUBCONTRACTORS

As per Section 5 of the Personal Services Agreement, the following businesses will be subcontractors. Subcontractors are required to have a City of Canby Business License prior to commencing work under this contract.

Name of Business	Address	Phone	CCB#
AMMA Transit Planning	393 Two Tree Road Riverside CA 92507	951.784.1333	
Multi Cultural Collaborative	4419 NE Sumner St. Portland, OR 97218	503.351.8548	

The City hereby approves the above listed subcontractors.



City of Canby

9/21/2016

Date

Exhibit A

Scope of Work (Workplan)							
Project Scope	Task Deliverable	JWA Proposed Workplan	JWA	MCC	AMMA	Estimated Date	City and MV effort
as per RFP	as per RFP	July 15, 2016	Hours of effort			*tentative date	
Task 1	Work Plan	1. Work Plan Development					
Task 1		1.1. Project Scope and Work Plan	2	6	0	July-August	
Task 1		1.2. Coordination Calls (8)	8	8	0	Ongoing	
Task 2	Public Engagement Plan	1.3. Public Involvement Plan and Early Outreach	1	12	0	September 19-30	CAT staff, MV and contractors will develop the PI plan together.
Tasks 1 & 2	Service Analysis and Recommendations	2. Kickoff					
Tasks 2 & 3		2.1. Project Kickoff Meeting	8	4	2	September 19*	
Task 3		2.2. Field Work and Interviews	10	0	0	September 19-23*	Assistance setting up staff interviews, and CAT management may want to attend
Task 3	Service Analysis and Recommendations	3 Data Organization					
Task 3		3.1. Organization of agency data	8	0	0	September	
Task 3		3.1.1 CAT Route 99 data collection	2			September 19-20*	MV drivers will count boardings per stop. JWA will assist in preparation, CAT and MV will execute.
Task 3		3.2. Analysis of agency data	18	0	0	September-October	
Task 3	Service Analysis and Recommendations	4. Choices Report and Future Alternatives					
Task 3		4.1. Maps	14	0	0	October 3-7	
Task 3		4.2. Charts	8	0	0	October 3-7	
Task 3		4.3. Transit Performance Analysis	16	0	0	October 3-7	
Task 3		4.5. Network Structure Analysis	14	0	0	October 3-7	
Task 3		4.6. DAR Existing Conditions	6	0	16	October 3-7	CAT staff and MV will assist AMMA by providing requested DAR reports and assistance with understanding DAR reports.
Task 3		6.1. Retreat prep	23	0	1	October 10-14	Before the Retreat, JWA will validate some operating assumptions with CAT staff. (Including cost per revenue hour.)
Task 3		6.2. Core Design Retreat (1 Day)	18	0	10	October 18*	All-day commitment.
Task 3	Service Analysis and Recommendations	6.3. Draft Future Alternatives (2)	19	0	0	October 24-November 4	CAT will review the alternatives, and facilitate a review of them by CAT's colleagues, before formal versions are created for public consumption.
Task 3		6.3.1 Talk with neighboring providers	6	0	0	October 24-November 4	
Task 3		6.4. Performance Analysis	11	0	4	October 24-November 4	

Exhibit A

Project Scope as per RFP	Task Deliverable as per RFP	JWA Proposed Workplan July 15, 2016	JWA	MCC	AMMA	Estimated Date *tentative date	City and MV effort	
			Hours of effort					
Task 3		4.7. Draft Report	40	4	0	November 14-25	JWA will produce a draft report, which includes Existing Conditions analysis AND the (already-reviewed) alternatives. JWA will need CAT and its colleagues to read it carefully before it is finalized for the public.	
Task 3		4.8. Final Report	8	0	0	December 16		
		5. Public and Stakeholder Engagement						
Task 2	Public Engagement	5.1. Stakeholder workshop recruiting	4	16	0	October-December	CAT will provide contact people and organizations, and perhaps some introductions.	
Task 2		5.2. Public Survey(s)	11	6	1	January		
Task 2		5.3. Stakeholder Workshop Prep	20	5	3	December		
Task 2		5.4. Stakeholder Workshop	14	14	0	January		Big event.
Task 2		5.5. Council Presentation	7	0	0	Flexible		
			6. Draft and Final Plan					
Task 3	Service Analysis and Recommendations	6.1. Transit Network and Service Recommendations (aka "Preferred Alternative")	29	0	3	February		
Task 3		6.2. Performance Analysis	11	0	4	February		
Task 5	Policy	6.3. Recommended Policies	0	0	0	February		
Task 5		6.3.1. Expansion/Improvement priorities	9	1	0	February		
Task 5		6.3.2. Land use, walkability, TOD policies	4	0	0	February		
Task 5		6.3.3. Service Standards and Performance Measures	9	1	3	February		
Task 3	Service Analysis and Recommendations	6.4. Draft Schedules for Fixed Route(s)	8	0		February		
Task 4	Capital Needs Assessment	6.5. Capital Needs Assessment	15	0	2	February		
Task 6	Potential Funding Sources	6.6. Future Funding Sources	12	0	4	February		
Task 7	Draft document	6.7. Draft TMP	48	4	0	March	Big plan to review.	
Task 7	Final Transit Master Plan Document	6.8. Final TMP	14	0	0	April		

Exhibit A

Canby TMP Cost Proposal	JWA			AMMA			MCC			Task Subtotals
	Labor Subtotal	Labor Cost	Direct Costs	Labor Subtotal	Labor Cost	Direct Costs	Labor Subtotal	Labor Cost	Direct Costs	
1. Work Plan Development										
1.1. Project Scope and Work Plan	2	\$ 210		0	\$ -		6	\$ 805		
1.2. Coordination Calls (8)	8	\$ 840		0	\$ -		8	\$ 840		
1.3. Public Involvement Plan and Early Outreach	1	\$ 105		0	\$ -		12	\$ 1,205		
<i>1. Work Plan subtotals</i>	<i>11</i>	<i>\$ 1,155</i>	<i>\$ -</i>	<i>0</i>	<i>\$ -</i>	<i>\$ -</i>	<i>26</i>	<i>\$ 2,850</i>	<i>\$ -</i>	<i>\$ 4,005</i>
2. Kickoff										
2.1. Project Kickoff Meeting	8	\$ 780	\$ 24	2	\$ 260		4	\$ 420	\$ 24	
2.2. Field Work and Interviews	10	\$ 930	\$ 24	0	\$ -		0	\$ -		
<i>2. Kickoff subtotals</i>	<i>18</i>	<i>\$ 1,710</i>	<i>\$ 48</i>	<i>2</i>	<i>\$ 260</i>	<i>\$ -</i>	<i>4</i>	<i>\$ 420</i>	<i>\$ 24</i>	<i>\$ 2,462</i>
3 Data Organization										
3.1. Organization of agency data	10	\$ 930		0	\$ -		0	\$ -		
3.2. Analysis of agency data	18	\$ 1,650		0	\$ -		0	\$ -		
<i>3. Data Organization subtotals</i>	<i>28</i>	<i>\$ 2,580</i>	<i>\$ -</i>	<i>0</i>	<i>\$ -</i>	<i>\$ -</i>	<i>0</i>	<i>\$ -</i>	<i>\$ -</i>	<i>\$ 2,580</i>
4. Choices Report and Future Alternatives										
4.1. Maps	14	\$ 1,290		0	\$ -		0	\$ -		
4.2. Charts	8	\$ 750		0	\$ -		0	\$ -		
4.3. Transit Performance Analysis	16	\$ 1,470		0	\$ -		0	\$ -		
4.5. Network Structure Analysis	14	\$ 1,290		0	\$ -		0	\$ -		
4.6. DAR Existing Conditions	6	\$ 570		16	\$ 1,606		0	\$ -		
6.1. Retreat prep	23	\$ 2,260		1	\$ 130		0	\$ -		
6.2. Core Design Retreat (1 Day)	18	\$ 3,195	\$ 24	10	\$ 1,300	\$ 615	0	\$ -		
6.3. Draft Future Alternatives (2)	19	\$ 1,755		0	\$ -		0	\$ -		
6.3.1 Talk with neighboring providers	6	\$ 920	\$ 24	0	\$ -		0	\$ -		
6.4. Performance Analysis	11	\$ 1,005		4	\$ 362		0	\$ -		
4.7. Draft Report	40	\$ 3,950		0	\$ -		4	\$ 565	\$ 500	
4.8. Final Report	8	\$ 750		0	\$ -		0	\$ -		
<i>4. Choices Report and Alternatives subtotals</i>	<i>183</i>	<i>\$ 19,205</i>	<i>\$ 48</i>	<i>31</i>	<i>\$ 3,398</i>	<i>\$ 615</i>	<i>4</i>	<i>\$ 565</i>	<i>\$ 500</i>	<i>\$ 24,331</i>
5. Public and Stakeholder Engagement										
5.1. Stakeholder workshop recruiting	4	\$ 390		0	\$ -		16	\$ 1,565		
5.2. Public Survey(s)	11	\$ 1,035		1	\$ 130		6	\$ 580	\$ 500	
5.3. Stakeholder Workshop Prep	20	\$ 2,005		3	\$ 311		5	\$ 595		
5.4. Stakeholder Workshop	14	\$ 1,365	\$ 24	0	\$ -		14	\$ 1,470	\$ 2,749	
5.5. Council Presentation	7	\$ 850	\$ 24	0	\$ -		0	\$ -		
<i>5. Public and Stakeholder Engagement subtotals</i>	<i>56</i>	<i>\$ 5,645</i>	<i>\$ 48</i>	<i>4</i>	<i>\$ 441</i>	<i>\$ -</i>	<i>19</i>	<i>\$ 4,210</i>	<i>\$ 3,249</i>	<i>\$ 13,593</i>
6. Draft and Final Plan										
6.1. Transit Network and Service Recommendations	29	\$ 2,890		3	\$ 311		0	\$ -		
6.2. Performance Analysis	11	\$ 1,005		4	\$ 362		0	\$ -		
6.3. Recommended Policies	0	\$ -		0	\$ -		0	\$ -		
6.3.1. Expansion/Improvement priorities	9	\$ 1,030		0	\$ -		1	\$ 175		
6.3.2. Land use, walkability, TOD policies	4	\$ 390		0	\$ -		0	\$ -		
6.3.3. Service Standards and Performance Measures	9	\$ 1,030		3	\$ 311		1	\$ 175		
6.4. Draft Schedules for Fixed Route(s)	8	\$ 1,070					0	\$ -		
6.5. Capital Needs Assessment	15	\$ 1,540		2	\$ 260		0	\$ -		
6.6. Future Funding Sources	12	\$ 1,140		4	\$ 441		0	\$ -		
6.7. Draft TMP	48	\$ 5,140		0	\$ -		4	\$ 610		
6.8. Final TMP	14	\$ 1,290		0	\$ -		0	\$ -		
<i>6. Draft and Final Plan subtotals</i>	<i>159</i>	<i>\$ 16,525</i>	<i>\$ -</i>	<i>16</i>	<i>\$ 1,685</i>	<i>\$ -</i>	<i>6</i>	<i>\$ 960</i>	<i>\$ -</i>	<i>\$ 19,170</i>
Subtotals for all Tasks	455	\$ 46,820	\$ 144	53	\$ 5,784	\$ 615	81	\$ 9,005	\$ 3,773	\$ 66,141

Exhibit B: Federal Transit Administration Required Terms and Conditions

No Obligation by the Federal Government

1. The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
3. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Access to Records and Reports

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

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

Federal Changes

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

Termination

1. **Termination for Convenience (General Provision).** The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.
2. **Termination for Default [Breach or Cause] (General Provision).** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

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

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

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

4. **Waiver of Remedies for any Breach.** In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
5. **Termination for Convenience (Professional or Transit Service Contracts).** The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's

interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

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

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

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

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

8. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the (Recipient).
9. **Termination for Default (Construction).** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

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

- a. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include:

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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

- b. The contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

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

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

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

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

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

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

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

Civil Rights

The following requirements apply to the underlying contract:

1. **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to the underlying contract:

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

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

Exhibit B

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

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

Disadvantaged Business Enterprise

1. 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 agency's overall, race-neutral goal for DBE participation is 8%. A separate contract goal has not been established for this procurement.
2. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as {insert agency name} deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
3. The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

Incorporation of Federal Transit Administration (FTA) Terms

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

Suspension and Debarment

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

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

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

The certification in this clause is a material representation of fact relied upon by {insert agency name}. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in

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addition to remedies available to {insert agency name}, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Rights in Data

The following requirements apply to each contract involving experimental, developmental or research work:

1. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
2. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
 - a. Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
 - b. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 - (1) Any subject data developed under that contract, whether or not a copyright has been obtained; and
 - (2) Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.
 - c. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits

- resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.
- d. Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
 - e. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
 - f. Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.
 - g. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
3. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (*i.e.*, a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

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

Patent Rights

The following requirements apply to each contract involving experimental, developmental, or research work:

1. *General* - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
2. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
3. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

Energy Conservation

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