

**CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN
CENTRAL NEW YORK REGIONAL PLANNING AND DEVELOPMENT BOARD
AND
[INSERT NAME]
FOR [INSERT PROJECT NAME]**

PARTIES: This Agreement made this ____ day of _____, 2017 by and between the Central New York Regional Planning and Development Board (hereinafter called the “Board”), with its office and place of business at 126 North Salina Street, Suite 200, Syracuse, New York 13202, acting on behalf of the Syracuse Metropolitan Transportation Council (hereinafter called the “Council”) and [Consultant] (hereinafter called “Consultant”) with offices at [Address], WITNESSETH, that the Consultant has entered into an Agreement with the Board to perform transportation planning services in support of the Council’s Unified Planning Work Program (UPWP).

The Central New York Regional Planning and Development Board is the administrative agent of Onondaga County, which is the designated host of the Council. As such, it is responsible for execution of all contracts. The content of technical work, however, is the responsibility of the Council, the primary client for the work of the Consultant.

PROJECT SUMMARY: This project, [INSERT PROJECT NAME] is funded by the Federal Highway Administration and/or the Federal Transit Administration of the U.S. Dept. of Transportation.

DOCUMENTS FORMING THE AGREEMENT:

1. **Schedule A** – General Provisions
 - Article II- Insurance
 - Article III- Billing Policy
2. **Schedule B** – Federal Required Clauses
3. **Schedule C** – Other Federal and Contract Requirements
4. **Schedule D** – Supplemental Title VI Provisions (Civil Rights Act)
5. **Schedule E** – Scope of Services and Fee
6. **Schedule F** – Invoice Form
7. **Schedule G** – Deliverables

Time of Performance: This Agreement shall be in effect from [DATE] to [DATE].

IN WITNESS WHEREOF, the Board acting on behalf of the Council and the Consultant has executed this Agreement as of this final date of execution, the ____ day of _____, 2017.

CONSULTANT

[Consultant]

By: _____ Date: _____

Title: _____

STATE OF New York
COUNTY OF _____ ss.:

On this ____ day of _____, 2017, before me personally appeared _____ to me personally known, who acknowledged that he/she resides in _____, New York, that he/she is the _____ of **[Consultant]**, the organization described in and which executed the within instrument, and that the instrument was executed pursuant to the authority in him/her vested.

Notary Public: _____

BOARD

Central New York Regional Planning and Development Board

By: _____ Date: _____

Title: _____

STATE OF NEW YORK
COUNTY OF ONONDAGA ss.:

On this ____ day of _____, 2017, before me personally appeared _____ to me personally known, who acknowledged that he/she resides in _____, New York, that he/she is the _____ of the **Central New York Regional Planning and Development Board**, the organization described in and which executed the within instrument, and that the instrument was executed pursuant to the authority in him/her vested.

Notary Public: _____

[Insert Project Name]

SCHEDULE A

GENERAL PROVISIONS

- 1.1 **GOVERNING LAW:** This Agreement shall be construed and enforced in accordance with the laws of the State of New York.
- 1.2 **ENTIRE AGREEMENT/AMENDMENT:** This Agreement constitutes the entire Agreement between the parties hereto, and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein, shall be binding or valid, and this Agreement shall not be changed, modified, or altered in any manner except by an instrument in writing executed by the parties hereto.
- 1.3 **COUNCIL'S REPRESENTATIVE:** The Council Director, James D'Agostino, will serve as the point of contact for the Consultant in regard to this Agreement and the Consultant's services and obligations hereunder.
- 1.4 **CONSULTANT'S PERSONNEL:** The Consultant shall designate in writing to the Council, one individual, satisfactory to the Council, who shall be responsible for coordinating all of the services to be rendered by the Consultant and who shall be the Council's normal point of contact with the Consultant on matters relating to such services. Such individual shall be replaced upon the Council's written request.
- 1.5 **SUPERVISION BY THE COUNCIL:** The services to be performed by the Consultant under this Agreement shall be subject to the general supervision and direction of the Council on behalf of the Board. Neither the exercise nor failure to exercise such supervision and direction shall relieve the Consultant of any of its obligations or responsibilities for its acts or failures to act in regard to this Agreement.
- 1.6 **CONSULTANT AS INDEPENDENT CONTRACTOR:** Notwithstanding any other provisions of this Agreement, the Consultant's status (and that of any Subconsultant) shall be that of an independent contractor and not that of an agent or employee of the Board or Council. Accordingly, neither the Consultant nor any Subconsultant shall hold itself out as, or claim to be, acting in the capacity of an employee or agent of the Board or Council.
- 1.7 **INDEMNIFICATION:** In addition to any liability or obligation of the Consultant to the Board, acting on behalf of the Council, that may exist under this Agreement or by statute or otherwise, the Consultant shall indemnify and hold the Board and the Council, and its respective agents, directors, officers and employees, the County of Onondaga, and the State of New York, harmless from and against any damages, costs, claims, or liabilities which the Board, Council, County of Onondaga or State of New York may sustain, as a result of any and all liabilities, losses, damages, interests, judgments, and liens flowing out of, and any and all costs and expenses (including without limitation, reasonable

counsel fees, and disbursements) arising out of, or incurred in connection with, any and all claims, losses, damages, expenses, demands, suits, actions, or proceedings which may be made or brought against the Board, Council, County of Onondaga, or State of New York for or in relation to any damages or loss caused by the Consultant or its employees.

1.8 NO BROKER: The Consultant represents that it has not employed any person, corporation, or partnership, to solicit or procure this Agreement, and has not made, and will not make, any payment or agreement for the payment of any commission, percentage, brokerage or contingent fee, or other compensation in connection with the procurement of this Agreement.

1.9 CONFLICT OF INTEREST: The Consultant represents that:

(a) The Consultant has not now, and will not acquire, any interest, direct or indirect, present or prospective, in the project to which the Consultant's work relates or the real estate which is the subject of the project, or in the immediate vicinity thereof, and has not employed and will not knowingly employ, in connection with work to be performed hereunder, any person or entity having any such interest during the term of this Agreement.

(b) No officer, employee, agent or director of the Board or Council, or any of its subsidiaries shall be permitted to share any benefit to arise here from.

(c) No officer, employee, agent or director of the Board or Council, or any of its subsidiaries shall participate in any decision relating to this Agreement which affects his personal interest or the interest of any corporation, partnership or association in which he is directly or indirectly interested; nor shall any officer, agent, director or employee of the Board or Council, or any of its subsidiaries have any interest, direct or indirect, in this Agreement or the proceedings thereof.

The Consultant shall cause, for the benefit of the Board, on behalf of the Council, every contract or agreement with any Subcontractor to include representations contained in subsections (a), (b), (c) of this Section 1.9. The Consultant will take such action in enforcing such provisions as the Board, acting on behalf of the Council, may direct, or at its option, assign such rights as it may have to the Board, acting on behalf of the Council, for enforcement by the Board, acting on behalf of the Council.

1.10 ASSIGNMENT BY THE BOARD: The Consultant agrees that it shall not assign transfer, convey, subcontract or otherwise dispose of this contract or its rights under this contract, title or interest in and/or to the same nor any part thereof nor the power to execute such contract to any other person, company or corporation without the prior written consent of the Board.

1.11 APPROVAL OF SUBCONSULTANTS: The Consultant shall not employ, contract with or use the services of any consultant, special contractors, or other third parties (collectively "Subconsultants"), in connection with the performance of its obligations

under this Agreement without the prior written consent of the Council. The Consultant shall inform the Council, in writing, of the name, proposed service to be rendered, and compensation of the Subconsultant, and of any interest it may have in the proposed Subconsultant.

- 1.12 APPROVALS OR ACCEPTANCE BY THE COUNCIL:** Whenever action is to be taken, or approval or acceptance given, by the Council, such action or approval or acceptance shall be deemed to have been taken or given only if so taken or given in writing by the Council's Director or, at his direction, the Project Manager. The Council, acting on behalf of the Board, shall notify the Consultant of the giving or withholding of each such approval or acceptance within a reasonable period of time. The Council's acceptance or approval of any specifications, drawings, plans, reports, or other materials prepared by the Consultant hereunder shall in no way relieve the Consultant of responsibility for such materials.
- 1.13 NOTICE OF DELAYS:** The Consultant shall promptly give written notice to the Council of the occurrence of an event, action or condition that may delay completion of the work (or extend the Completion Date). Under no circumstances shall additional monies be made available to the Consultant for delays or cost overruns.
- 1.14 COMPENSATION:** The Board shall pay the Consultant for services rendered, as established in the Scope of Services. The Board shall only issue payment to the Consultant upon the successful completion, indicated by the approval of the Council, of the Deliverables outlined in Schedule G. The Consultant shall receive payment for services rendered and be reimbursed for eligible expenses incurred only after the Board, acting on behalf of the Council, has received corresponding payment from the U.S. Department of Transportation.
- 1.15 EXECUTORY CLAUSE:** It is understood by and between the parties hereto that this Agreement shall be deemed executory to the extent of monies appropriated and available and for the purpose of this Agreement and no liability on account thereof shall be incurred by the Board beyond monies actually appropriated and made available for the purpose hereof.
- 1.16 TERMINATION:** It is agreed by both parties that conditions and remedies for termination of this Agreement are outlined in Schedule B, Federal Required Clauses (#9).
- 1.17 CONSULTANT TO OBTAIN PERMITS, ETC:** Except as otherwise instructed in writing by the Board, acting on behalf of the Council, the Consultant shall obtain and comply with all legally required licenses, consents, approvals, orders, authorizations, permits, restrictions, declarations, and filings required to be obtained by the Board, acting on behalf of the Council, or the Consultant in connection with this Agreement.
- 1.18 OWNERSHIP OF DOCUMENTS AND OTHER MATERIALS:** All originals and negatives of all plans, drawings, reports, photographs, charts, programs, models,

specimens, specifications, and other documents or materials, including electronic data files, required to be furnished by the Consultant under this Agreement, including drafts and reproduction copies thereof, shall be and remain the property of the Council, and the Council shall have the right to publish, transfer, sell, license, and use all or any part of such reports, plans, drawings, specification, and other documents without payment of any additional royalty, charge, or other compensation to the Consultant. Upon request of the Council during any stage of the work, the Consultant shall deliver all such materials to the Council.

- 1.19 CONFIDENTIALITY:** The Consultant hereby agrees that all data, recommendations, reports, and other materials developed in the course of this study are strictly confidential between the Consultant and the Council, and the Consultant may not at any time reveal or disclose such data, recommendations, or reports, in whole or in part, to any third party without first obtaining permission from the Council. Notwithstanding the preceding sentence, the Consultant shall cooperate fully with such third parties as the Council may designate by written request. Such cooperation shall include making available to such parties data, information, and reports used or developed by the Consultant in connection with this study.
- 1.20 NO WAIVER:** No failure by the Board, acting on behalf of the Council, to insist upon the strict performance of any term or condition of this Agreement or to exercise any right or remedy consequent upon breach thereof, and no acceptance of full or partial performance during the continuance or any such breach, shall constitute a waiver of any such breach or such term or condition. No term or condition of this Agreement to be performed or complied with by the Consultant, and no breach thereof, shall be waived, altered, or modified except by a written instrument executed by the Board, acting on behalf of the Council. No waiver or any breach shall affect or alter this Agreement, but each and every term and condition of this Agreement shall continue in full force and effect with respect to any other existing or subsequent breach thereof.
- 1.21 MISCELLANEOUS:** The parties hereto agree that this Schedule A shall be controlling in the event of any inconsistencies or conflicts between the terms of this Schedule A and any part of the Agreement.

ARTICLE II

INSURANCE

2.1 INSURANCE: The Consultant and its Subconsultants shall maintain insurance of the types and coverage set forth below, written on an occurrence basis, reasonably acceptable to the Central New York Regional Planning and Development Board (CNY RPDB) which shall provide primary liability coverage to the Consultant and with the CNY RPDB, Syracuse Metropolitan Transportation Council (SMTC), the County of Onondaga, and the State of New York named as additional insured for claims which may arise out of or result from the Consultant's operations under this contract, including without limitation, (1) claims because of bodily injury, occupational sickness or disease, or death, whether to the Consultant, or Consultant's employees, or others, and whether or not under a workers' compensation or other similar act or law for the benefit of employees; and (2) claims because of injury to or destruction of tangible property, including loss of use resulting there from.

- General Liability insurance, not less than \$1,000,000 per occurrence and an annual aggregate of \$2,000,000.
- Automobile Liability insurance with a limit of not less than \$1,000,000 combined single limit for bodily injury and property damage.
- Workers' Compensation Insurance coverage.

All policies shall be written so that the CNY RPDB will be notified of cancellation or restrictive amendment at least thirty (30) days prior to the effective date of such cancellation or amendment.

2.2 CERTIFICATES OF INSURANCE: Certificates of insurance from the carrier, or their authorized agent, with the appropriate additional insured endorsement attached showing the CNY RPDB, SMTC, County of Onondaga, and the State of New York as an additional insured, and stating the limits of liability, coverage period, and expiration date shall be filed with and accepted by the CNY RPDB before the contract is executed. The intent is that this insurance, with the CNY RPDB and the SMTC named as additional insured, is to be primary over and above the CNY RPDB's general liability coverage.

ARTICLE III

BILLING POLICY

- 3.1 COMPENSATION:** The Consultant is required to submit detailed documentation in support of the Consultant's payment request. All invoices and their accompanying documentation must be forwarded to:

Syracuse Metropolitan Transportation Council
126 North Salina Street
100 Clinton Square, Suite 100
Syracuse, New York 13202
Attn.: James D'Agostino, Director

Documentation of work performed by the Consultant's employees shall include copies of time records showing the number of hours worked on the study or other forms as deemed acceptable by the Board, acting on behalf of the Council.

The Consultant shall be reimbursed for services rendered and costs incurred only after the Board receives these monies. Services rendered and costs incurred which are disallowed for payment shall be disallowed for reimbursement payment by the Council to the Consultant.

- 3.2 INVOICES:** All requests for payment shall be made using the invoice form included as **Schedule F** and submitted as appropriate.

Out-of-pocket expenses should be delineated on any invoices by general category. The Consultant must submit supporting documentation for each individual expense category.

All invoices shall contain a statement that the Consultant certifies under the pains and penalties of perjury, that all work for which payment is requested has been performed and such performance is in full compliance with the provisions of this Agreement.

- 3.3 NON-REIMBURSABLES:**

- (a) Insurance
- (b) Valet Services
- (c) Personal expense of any type
- (d) Expenses paid for Board or Council employees
- (e) Alcoholic Beverages.

- 3.4 EQUIPMENT SUPPLIES:** Where the Agreement allows reimbursement for equipment and supplies, the Consultant must supply the following detailed documentation.

- (a) Receipts of suppliers' invoices for costs of commodities, equipment and supplies, insurance, and other items. Invoices must show quantity, description and price (less applicable discounts and purchasing agent's commission).
- (b) Title to all equipment purchased pursuant to this Agreement is vested in the Council. The Council has the option of claiming any or all of such equipment.

3.5 GENERAL:

- (a) All receipts must be legible. Illegible receipts will not be reimbursed.
- (b) Whenever possible, original receipts should be presented for reimbursement.
- (c) The Board is exempt from all sales and usage taxes within New York State. A copy of the Board's certificate of tax exemption may be obtained by writing to the Board.
- (d) Costs disallowed for whatever reason are not eligible for reimbursement to the Consultant.

At any time or times until five years after completion of the Consultant's services or earlier termination of this Agreement, the Board may have the vouchers and statements of consultant's cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related voucher that are found, on the basis of such audit, not to constitute allowable cost. Any such payment may be reduced for overpayments, or increased for underpayment, as the case may be.

SCHEDULE B

FEDERAL REQUIRED CLAUSES

1. **ENERGY CONSERVATION:**

Consultant 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.

2. **CLEAN WATER:** Applicability – All Contracts and Subcontracts over \$100,000.

Consultant shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. Consultant shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to Federal Transit Administration (FTA) and the appropriate Environmental Protection Agency (EPA) Regional Office. Consultant shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

3. **LOBBYING:** Certification regarding lobbying form must be signed for contracts over \$100,000.

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

4. **ACCESS TO RECORDS AND REPORTS:**

The following access to records requirements apply to this Contract:

(1) The consultant shall provide the Board, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and consultant records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Consultant shall also, pursuant to 49 CFR

633.17, provide authorized FTA representatives, including any PMO contractor, access to consultant's records and construction sites pertaining to a capital project, defined at 49 U.S.C. § 5302(a)1, which is receiving FTA assistance through the programs described at 49 U.S.C. § 5307, 5309 or 5311.

(2) Consultant 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 consultant agrees to maintain same until the Council, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. (*Reference 49 CFR 18.39(i)(11)*).

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

5. FEDERAL CHANGES:

Consultant 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 State of New York and FTA, as they may be amended or promulgated from time to time during the term of the contract. Consultant's failure to comply shall constitute a material breach of the contract.

6. CLEAN AIR: Applicability – All contracts over \$100,000.

(1) Consultant shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 U.S.C. § 7401 et seq. Consultant 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) Consultant shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

7. NO GOVERNMENT OBLIGATION TO THIRD PARTIES:

(1) The Council and consultant 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 Council, the consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) Consultant 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.

8. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS:

(1) Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 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, consultant 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, consultant 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 consultant to the extent the US Government deems appropriate.

(2) If consultant 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 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 consultant, to the extent the US Government deems appropriate.

(3) Consultant 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.

9. TERMINATION:

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

(2) Termination for Default [Breach or Cause] – If the consultant does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and consultant fails to perform in the manner called for in the contract, or if consultant fails to comply with any other provisions of the contract, the Board may terminate this contract for default. Termination shall be effected by serving a notice of termination to consultant setting forth the manner in which consultant is in default. The consultant 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 Council that consultant 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 consultant, the Council, after setting up a new delivery or performance schedule, may allow consultant to continue work, or treat the termination as a termination for convenience.

(3) Opportunity to Cure – the Board in its sole discretion may, in the case of a termination for breach or default, allow the consultant 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 the consultant fails to remedy to the Board’s satisfaction the breach or default or any of the terms, covenants, or conditions of this Agreement within ten (10) days after receipt by consultant or written notice from the Board setting forth the nature of said breach or default, the Board, on behalf of the Council, shall have the right to terminate the contract without any further obligation to consultant. Any such termination for default shall not in any way operate to preclude the Board from also pursuing all available remedies against consultant and its sureties for said breach or default.

(4) Waiver of Remedies for any Breach – In the event that the Board elects to waive its remedies for any breach by consultant of any covenant, term or condition of this contract, such waiver by the Board shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.

10. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT): Applicability – Contracts over \$25,000

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the consultant is required to verify that none of the consultant, 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 consultant 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 the Board. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Board, 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.

11. **CIVIL RIGHTS REQUIREMENTS:**

The following requirements apply to the underlying contract:

The Consultant 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.

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 Consultant 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 Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. *Equal Employment Opportunity* - The following equal employment opportunity requirements apply to the underlying contract:
 - a. *Race, Color, Creed, National Origin, Sex* - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Consultant 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 Consultant 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 Consultant 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 Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

- c. *Disabilities* - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Consultant 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 Consultant agrees to comply with any implementing requirements FTA may issue.
3. The Consultant 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.

12. BREACHES AND DISPUTE RESOLUTION:

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the Council's Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, consultant mails or otherwise furnishes a written appeal to the Council's Director. In connection with such appeal, consultant shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Council's Director shall be binding upon consultant and consultant shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the Council, consultant shall continue performance under this Agreement 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 Council and consultant 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 New York 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 consultant shall constitute a waiver of any right or duty afforded any of them under the Agreement, 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.

13. DISADVANTAGED BUSINESS ENTERPRISE (DBE):

(1) This Agreement is subject to the requirements of Section 1101(b) of MAP-21, 23 U.S.C. § 101 note, Title 49, Code of Federal Regulations, Part 26, and 49 U.S.C. § 5332 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 Council's overall goal for DBE participation is 10%.

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

(4) The consultant 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 consultant's receipt of payment for that work from the Council. In addition, the consultant 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 Council and consultant's receipt of the partial retainage payment related to the subcontractor's work.

(5) The consultant must promptly notify the Council 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 consultant 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 Council.

14. PROMPT PAYMENT:

The prime consultant 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 Council. The prime consultant agrees further to return retainage payments to each subcontractor within 30 days after the

subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Council. This clause applies to both DBE and non-DBE subcontracts.

15. **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS:**

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 consultant 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.

SCHEDULE C

OTHER FEDERAL AND CONTRACT REQUIREMENTS

1. **ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES:** Consultant shall comply with 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. Consultant shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.
2. **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.
3. **INELIGIBLE CONTRACTORS AND SUBCONTRACTORS:** Any name appearing upon the Comptroller General's list of ineligible consultants for federally-assisted contracts shall be ineligible to act as a subcontractor for consultant pursuant to this contract. If consultant 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.
4. **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.S.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.
5. **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.

SCHEDULE D

SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

All references to the Federal Highway Administration below shall be understood to refer to the Federal Transit Administration as well.

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

1. **COMPLIANCE WITH REGULATIONS:** The consultant 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 Consultant, 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 consultant 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. **SOLICITATION FOR SUBCONTRACTS, INCLUDING PROCUREMENTS OF MATERIALS AND OTHER EQUIPMENT:** In all solicitations either by competitive bidding or negotiation made by the consultant 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 consultant of the consultant'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 consultant 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 the New York State Department of Transportation (NYSDOT) or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish this information the consultant 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 consultant'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 Consultant under the contract until the Consultant complies, and/or
 - (b) Cancellation, termination or suspension of the contract, in whole or in part.
6. **INCORPORATION OF PROVISIONS:** The consultant 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 consultant shall take such action with respect to any subcontract or procurement as the 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 consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the consultant may request the NYSDOT to enter into such litigation to protect the interests of the NYSDOT, and, in addition, the consultant may request the United States to enter into such litigation to protect the interests of the United States.