

Montgomery County

Request for Proposals
to provide
Management, Operation and Maintenance of the
Public Transportation System



MONTGOMERY
C O U N T Y NY

Montgomery County
Office of Economic Development & Planning

Proposal Due Date: September 20, 2019

The County of Montgomery County, New York, requests sealed proposals to provide public transportation services to Montgomery County residents. Sealed proposals must be received by the Purchasing Office, 20 Park Street, Fonda, New York 12068, on or before 12 p.m. (EST) on September 20, 2019.

Proposals are to be submitted in accordance with the Montgomery County Request for Proposals (RFP) dated August 30, 2019. Proposals received after 12 p.m. (EST) Friday, September 20, 2019, will be returned to the sender unopened. No proposal, once submitted, may be withdrawn for 90 days after due date.

The opening of proposals is open to the general public. The proposals will be opened at 12 p.m. (EST) Friday, September, 20, 2019 in Room 104, First Floor, County Annex Building, 20 Park Street, Fonda, New York 12068.

The successful Proposer will be required to comply with all applicable federal, state and local laws and regulations. This includes, but is not limited to, all applicable Equal Employment Opportunities laws and U.S. Department of Transportation Disadvantaged Business Enterprise regulations as outlined in the RFP.

The County of Montgomery County, New York, reserves the right to postpone, accept or reject any or all proposals, in whole or in part, at its discretion, subject to the rules and regulations set forth by Montgomery County, New York; the Federal Transit Administration (FTA); and the New York State Department of Transportation (NYSDOT). Firms or individuals whose names appear on the U.S. General Services Administration's list of ineligible contractors will not be considered.

Montgomery County, New York, affirmatively assures that no Proposer will be discriminated against on the basis of race, color, sex, age, disability, religion, ancestry, marital status, national origin, birth or sexual orientation.

The Request for Proposal, the proposal and any addenda, will become a permanent part of the contract.

Written questions related to this project must be received in the Economic Development & Planning office no later than 4 p.m. (EST) Monday, September 9, 2019 to 9 Park St., Fonda, New York, 12068. A copy of the RFP may be obtained by either writing to the above mentioned address or by calling the Economic Development & Planning Office at (518) 853-8334 or visiting the county website at www.co.montgomery.ny.us.

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SECTION I

General Conditions

1.1 Request for Proposals (RFP)

Montgomery County, New York, requests proposals to provide public transportation services. The RFP sets forth the minimum requirements that all proposals should meet. Failure to submit proposals in accordance to the RFP may render the proposal unacceptable. Montgomery County, New York anticipates making one award under this RFP.

The term “Request for Proposals (RFP)” means a document used in sealed-bid procurement procedures through which a purchaser advises the potential suppliers of statement and scope of work, specifications, schedules or timelines, contract type, data requirements, terms and conditions, description of goods and/or services to be procured, general criteria used in the evaluation procedure, special contractual requirements, technical goals, instructions for preparation of technical, management, and/or cost proposals. RFPs are publicly advertised, and suppliers respond with a detailed proposal, not only with a price quotation. They provide for negotiations after sealed proposals are opened, and the award of the contract may not necessarily go to the lowest bidder.

This RFP is issued by the local county government of Montgomery County, New York. All written communications pertaining to this RFP should be directed to the Economic Development & Planning Office, 9 Park Street, Fonda, New York 12068.

News releases pertaining to this RFP or the work to which it relates will not be made by any Proposer without prior local county government approval, and then only in coordination with Montgomery County.

1.2 Pre-Proposer Conference

No Pre-Proposer Conference is scheduled at this time.

1.3 Changes to the RFP

Montgomery County reserves the right, in its sole discretion, to make changes to the RFP. Changes shall be made in written addenda which shall be issued to all prospective Proposers who request a copy of the RFP.

Requests for clarification of the scope of work must be received by Montgomery County, in writing, by September 9, 2019. Montgomery County will evaluate any request submitted, but reserves the right to determine whether to respond to or make changes in response to any request.

Proposers shall not rely on verbal or written representations regarding this RFP except for written addenda issued by Montgomery County.

1.4 Addenda

All verbal modifications of this RFP are void and ineffective. Any proposed change in this RFP shall be submitted to Montgomery County for its prior approval. Only written addenda issued by Montgomery County are authorized and binding. Any changes required by such addenda shall be included in the Proposer's proposal and all costs of such changes shall be reflected in the proposal price. Proposers are required to acknowledge receipt of all addenda in their proposals.

1.5 Omissions

No advantage shall be taken by the Proposer from the omission of any details even though such details are not mentioned in this Request for Proposals.

1.6 Cancellation of RFP

Montgomery County reserves the right, in its sole discretion, to postpone and/or cancel this RFP at any time for its own convenience and to reject any or all proposals without liability prior to execution of the contract by Montgomery County.

1.7 Rejection of Proposals

Proposals will not be considered under the following conditions:

1. Proposals are received in the Montgomery County Purchasing Office after the due date and time; or
2. Proposals not received in their entirety

Montgomery County reserves the right, in its sole discretion, to reject any and all proposals received as a result of this RFP to serve the best interests of Montgomery County.

1.8 Single Response

If only one proposal is received in response to this RFP, a detailed cost proposal shall be required of the single Proposer.

1.9 Proposal Withdrawal

Proposals may not be withdrawn for ninety (90) calendar days after they are opened. Prior to the due date/time, however, proposals may be modified or withdrawn by the Proposer's authorized representative in person, or by written or fax notice. If proposals are modified or withdrawn in person, the authorized representative shall make his/her identity known and shall sign a receipt for the proposal.

Written or fax notices must be received in the office designated no later than the exact due date/time.

1.10 Confidentiality

It is in the public interest for Montgomery County to receive as many proposals as possible. Montgomery County acknowledges the possible confidential nature of any cost or price information requested by this Request for Proposals, and Montgomery County obliges itself in good faith not to disclose such information to others during the evaluation process. After contract award, disclosure of information shall be made only in accordance with local, New York State, and applicable Federal requirements/law.

Proposers are prohibited from contacting the Evaluation Committee prior to contract award.

1.11 Protest and Appeal Procedures

Interested parties aggrieved by a solicitation or the award of any resulting contract, may file written notice of protest with the Montgomery County Executive's Office at 20 Park Street, Fonda, New York 12068. At a minimum, such protests shall include: 1) name of protestor; 2) solicitation project name and description; and 3) statement of grounds for protest (reference specific text in the Request for Proposal). The decision of the Montgomery County Executive is final and is not subject to appeal.

The Montgomery County Executive or his/her designee shall determine the merits of said protest. He or she shall set a time and place for hearing of the protest, and shall advise all competitors that a protest has been filed. The County Executive may receive evidence and legal arguments from any interested party, but shall not be bound by the rules of evidence nor formal procedure. Unless otherwise directed by the County Executive, issues will be decided on the basis of written evidence and written arguments. All documents received by the County Executive shall be stamped with date and time received and logged into the protest file folder. The County Executive shall promptly issue his findings and conclusions to the protesting party in writing, and shall advise all interested parties.

Issues addressing the adequacy of the request for proposals, including without limitation the instructions, general conditions and specifications and scope of work must be received by the County Executive's Office not later than three (3) business days before the proposal due date. Thereafter, such issues are deemed waived by all interested parties. Where the County Executive decides that a protest lacks merit, all interested parties shall be so advised in writing and the evaluation and award process will continue.

Notice of protest against an award must be received by the County Executive's Office within five (5) business days immediately following the award. Where notice of protest against the award is received prior to the entry into the contract for the relevant procurement, and Montgomery County has not made a finding that procurement is urgently needed or performance will be unduly delayed or delay will result in undue harm to Montgomery County, the execution of the contract will be deferred until the County Executive passes upon the issues presented by the protest.

Where the County Executive decides that the protest lacks merit, the contract may be executed after five (5) business days have elapsed commencing with the first day following the date of the County Executive's decision. The County Executive's decision shall be in written form. Notice of decision shall be served upon all interested parties by certified mail.

The FTA will only entertain a protest that alleges Montgomery County has failed to follow its protest procedures. Interested parties may file a protest appeal to the FTA, which must be received by FTA and the County Executive's Office within five (5) business days of the service of the County Executive's determination. Such a protest must be filed in accordance with the procedures outlined in FTA Circular 4220.1F, dated March 18, 2013, as amended which is fully incorporated herein by reference.

1.12 Definition of Terms

Where the word "Purchaser" or "Purchasing Agency" or "Purchasing Division" is used in these instructions or the contract proposal, reference is made to Montgomery County. The words "Bid", "Offer", "Contractor Proposal" and "Proposal" are synonymous.

The term "County" shall mean Montgomery County, a Municipal Corporation of the State of New York.

The term "working day" includes all service days in accordance with contract, but excludes the following annually observed Holidays: Independence Day, Labor Day, Thanksgiving Day, Christmas Day, New Year's Day and Memorial Day.

The term "guest" shall mean a Personal Care Attendant (PCA) who is certified to care for the customer if needed.

The term "Procuring Agent" means Montgomery County.

The term "Deviated Fixed Route" means routes that typically operate along a well-defined corridor making predetermined stops to collect passengers at scheduled times. Passengers have the opportunity to flag a bus down between predetermined stops along that defined corridor at any time, as long as it is safe to do so. Route deviation is also provided which allows for a bus/route to deviate up to 3/4 mile to serve any passenger making a request for a deviation, including passengers living with a disability.

The term "Individual living with a disability" means an individual who because of illness, injury, age, congenital malfunction, or other incapacity or temporary or permanent disability (including an individual who is wheelchair user or has semi-ambulatory capability), cannot use effectively, without special facilities, planning, or design, public transportation service or public transportation facility 49 U.S.C. 5302 (a) (5).

The term “on-time” means if drivers arrive at the advertised stop locations within the 10-minute window after the published scheduled time. A minimum of 95 percent on-time performance shall be required with exceptions of vehicle and passenger safety; i.e. adverse weather conditions and road conditions. Under no circumstances will drivers leave a stop location prior to the published time.

The term “Other than Urbanized Areas” means any area outside of an urbanized area. The term “non-urbanized area” includes rural areas and urban areas under 50,000 in population not included in an urbanized area.

The term “Urbanized Area” means an area encompassing a population of not less than 50,000 people that has been defined and designated in the most recent decennial census as an “urbanized area” by the Secretary of Commerce. Small urbanized areas as used in the context of FTA formula grant programs are urbanized areas with a population of at least 50,000 but less than 200,000.

1.13 Qualifications for Award

In determining the successful Proposers, the criteria described in the "Specific Requirements" section will apply. Montgomery County reserves the right, in its sole discretion, to waive any minor irregularity in any proposal, to accept any proposal or to reject any or all proposals, or to award the contract on such basis as Montgomery County deems to be in its best interest to do so.

1.14 Disadvantaged Business Enterprise

It is the policy of the United States Department of Transportation that disadvantaged business enterprises, as defined in 49 CFR Part 26, as amended, and successions thereto, shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with Federal funds under this agreement.

The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the County deems appropriate. See EEO Attachments in Section V, Proposer’s Forms.

1.15 Equal Employment Opportunity

In connection with the execution of this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color sex, age or national origin. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of

compensation; and selection for training, including apprenticeship. See EEO Attachments in Section V, Proposer's Forms.

1.16 Insurance

At all times, the Contractor shall furnish auto liability insurance covering the operation of the vehicle(s) (whether Municipally-owned or Contractor-owned) used to fulfill the requirements of this contract in an amount not less than three million dollars (\$3,000,000) combined single limit coverage per occurrence. The Contractor must also provide proof of Workers Compensation insurance. The insurance company is to be one admitted under the insurance laws of New York State to write the line of insurance to be provided.

1.17 Conflicts of Interest

No member, officer or employee of Montgomery County or other local public body during his or her tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof. Organizational Conflicts of Interest, such as: Lack of Impartiality or Impaired Objectivity; Unequal Access to Information or Biased Ground Rules are prohibited by the Common Grant Rules.

Montgomery County will not enter into any contract involving Services or property with a member of its organization, its officers, its employees, any officials (elected or appointed) of Federal, State or Local governments, or a business in which any of the above have a significant interest or secure any benefit.

Indirect investment or interest means any investment or interest owned by the spouse or dependent child, by an agent, or by a business entity or trust in which the individual, individual's spouse, and dependent children own directly, indirectly, or has a financial or other interest.

1.18 Copyrights and Rights in Data

Montgomery County is free to copyright any material developed under or during the course of this project. Montgomery County reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, distribute, or otherwise use, and to authorize others to use the work for government purposes.

1.19 Laws and Regulations

The funding agency for the project addressed in this RFP includes the Federal Transit Administration, New York State Department of Transportation (NYSDOT) and/or Montgomery County. Their guidelines and regulations must be conformed to, not only by the recipient (the "County") but also by all Contractors and subcontractors. In addition, compliance requirements, which will be stated in the executed contract, are inclusive of the following:

1. Nondiscrimination in Federal Transit Programs. The Contractor agrees to comply, and assures compliance by each sub-contractor at any tier under the Project, with the provisions of 49 U.S.C. § 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
2. Nondiscrimination -- Title VI of the Civil Rights Act. The Contractor agrees to comply, and assures compliance by each sub-contractor at any tier under the Project, with all requirements prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21, and any implementing requirements that the FTA may issue.
3. Equal Employment Opportunity. The Contractor agrees to comply, and assures the compliance by each sub-contractor at any tier, with all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and 49 U.S.C. § 5332 and any implementing requirements FTA may issue.

4. Equal Employment Opportunity Requirements for Construction Activities. With respect to construction activities, the Contractor agrees to comply, and assures the compliance by each sub-contractor at any tier, with all applicable EEO 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. § 2000[e]) note, and any Federal statutes, executive orders, regulations, and Federal policies pertaining to construction undertaken as part of the Project.
5. Activities Not Involving Construction. The Contractor agrees to comply, and assures the compliance by each sub-contractor at any tier, with any applicable employee protection requirements for non-construction employees of section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 327 - 332, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.
6. The Contractor shall comply with U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.
7. The Contractor shall comply with the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 9-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs.
8. The Contractor shall comply with The Hatch Act, which limits the political activities of employees.
9. The Contractor shall comply with the Federal Fair Labor Standards Act.
10. The Contractor shall comply with the Davis-Bacon Act, as amended, 49 U.S.C. § 5333(a), the Davis-Bacon Act, 40 U.S.C. §§ 276a - 276a(7), and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.
11. The Contractor shall comply with the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874 and 40 U.S.C. § 276c, and U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. Part 3.

12. The Contractor shall comply with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations on Debarment and Suspension at 49 C.F.R. Part 29.
13. The Contractor shall comply with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352.
14. The Contractor is required to have operation authority through the New York State Department of Transportation.

State or local requirements and guidelines are included in the sample contract terms and conditions, attached to this RFP.

1.20 Non-Discrimination Clause

In accordance with all Federal and State Legislation and Regulations governing Fair Employment, including but not limited to, Title VI of the Civil Rights Act of 1964, the New York Civil Rights Act, the Proposer agrees that it will not discriminate against employees or applicants for employment with respect to hire, tenure, terms, conditions or privileges of employment because of religion, race, color, national origin, age, sex, height, weight, marital status or handicap that is unrelated to the ability of the individual to perform the duties of a particular assignment or position.

The Proposer recognizes the right of the United States and the State of New York to seek judicial enforcement of the foregoing covenants against the Proposer or its subcontractors, or both, in order to provide for efficient cooperation and coordination in the handling of contract compliance programs.

1.21 Contract Work Hours

1. Overtime Requirements

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

2. Payrolls and Basic Records

Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of eight years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1 (b) (2) (B) of the Davis-Bacon Act, daily and weekly number of hours worked, deductions made and actual wages paid.

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

1.22 Interest of Members or Delegates to Congress

No member of, or delegate to, the Congress to the United States shall be admitted to any share or part of this contract or to any benefit arising there from.

1.23 Debarred Bidders

No Contractor, nor any officer or controlling interest holder of Contractor, may be currently or have been previously, debarred or suspended or otherwise excluded from or ineligible to participate in Federally-assisted programs as established by the United States Government.

1.24 Title VI. Compliance

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

1. Compliance With Regulations

The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assigned programs of the Department of Transportation (hereinafter, "DOT"), Title 9, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein

incorporated by reference and made a part of this contract.

2. Nondiscrimination

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

3. Solicitations For Subcontracts, Including Procurement Of Materials and Equipment

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

4. Information and Reports

The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Recipient or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such Regulations, orders and instructions.

5. Sanctions For Noncompliance

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

- a. Withholding of payments to the Contractor under the contract until the Contractor complies; and/or
- b. Cancellation, termination or suspension of the contract, in whole or in part.

6. Incorporation of Provisions

The Contractor shall include the provisions of paragraph 1.25 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the Recipient or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the Recipient and the United States to enter into such litigation to protect the interests of the United States.

1.25 Audit and Inspection of Records

The Contractor shall permit the authorized representative of Montgomery County, the State of New York, the Comptroller General of the United States or any of their duly authorized representatives to inspect and audit all data and records of the Contractor relating to its performance and its subcontracts under this Contract with which Federal or State of New York funds are used from the date of the Contract through and until the expiration of eight years after completion of the Contract.

1.26 Termination of Contract

Montgomery County, by written notice, may terminate this Contract, in whole or in part without cause for the convenience of Montgomery County. Montgomery County shall provide the Contractor with written notice of such termination at least fifteen (15) days before the effective date of such termination.

If Montgomery County exercises the right to terminate this Contract because of conditions which are beyond the control of Montgomery County, such termination shall have immediate effect upon receipt of written notice by the Contractor.

Under the termination provisions of this paragraph, the Contractor shall not incur new obligations for the terminated portion after the effective date of termination and shall cancel as many outstanding obligations as possible.

If this Contract contains elements relating to equipment, supplies or service, or combinations thereof, the Contractor shall immediately submit to Montgomery County a final invoice subject to Montgomery County audit for an amount of the value of work actually performed up to the effective date of termination plus the allowable portion of the Contractor's profit computed from the total Contract price. After payment of such sum by Montgomery County, the County shall be under no further obligation to the Contractor.

Property and equipment for which full payment has been made shall, at the option of Montgomery County, become the property of Montgomery County. Any drawings, manufacturer's information, maintenance instructions or other material which are necessary to complete and properly maintain the work paid for shall be furnished to Montgomery County by the Contractor. In the case of termination for conditions which are beyond the control of Montgomery County, a cost termination inventory and independent audit of the project accounts that accurately reflect the actual costs incurred by the Contractor shall be submitted to Montgomery County as condition precedent for payment by Montgomery County.

1.26.1. Termination for Cause

If the Contractor shall fail to perform in a timely and proper manner any obligations under this Contract, or the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, Montgomery County may consider the Contractor in default and terminate this Contract. Such termination shall be by written notice.

Termination in accordance with the above shall not relieve the Contractor of any liability to the Montgomery County for damages sustained as a result of any breach of contract or default by the Contractor. Upon the default of the Contractor and the termination of this contract, Montgomery County may withhold any payments due the Contractor and apply the same as a set off against damages sustained by the Montgomery County as a result of the Contractor's default.

1.27 Prohibited Drug and Alcohol Use Prevention

The Federal Transportation Administration has issued regulations entitled "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations" (CFR Part 655 as amended). Contractors who perform safety-sensitive functions are required to comply with these regulations. A written policy must exist which prohibits illegal drug use at all times by safety-sensitive employees. In addition, alcohol consumption by safety-sensitive employees is prohibited while performing, and for eight (8) hours prior to performing safety-sensitive functions. Alcohol use after an accident is also prohibited. Furthermore, tests must be conducted to determine in six (6) specific situations whether employees have used alcohol or drugs. The procedures and technology to be employed in this testing are specified in the Department of Transportation's regulation, PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG TESTING PROGRAMS (49 CFR Part 40).

A Certificate of Compliance (see Form C in section V of this RFP) shall be attached to the proposal.

1.28 Disputes

Disputes arising in the performance of this Contract, which are not resolved by agreement of the parties, shall be decided in writing by the authorized representative of the County. This decision shall be final and conclusive. If within ten (10) business days from the date of Contractor's receipt of the County's final and conclusive decision, the County receives a written appeal from the Contractor, the County will schedule a hearing within ten (10) business days from receipt of such appeal. In connection with any such appeal and hearing, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position.

Unless otherwise directed by the County, including but not limited to termination of any kind, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.

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 a reasonable time after the first observance of such injury of damage.

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

The duties and obligations imposed by the Contract Documents and the rights and remedies available hereunder 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 Montgomery County or the Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.

1.29 Most Favored Customer

The Contractor warrants that the prices charged to the County hereunder are no more than those charged by the Contractor to other customers of the Contractor for substantially similar Services under substantially the same terms and conditions. Should the County believe that the Contractor has defaulted on this warranty, the County shall bring the default to the Contractor's attention and the parties may negotiate to reach an equitable resolution.

1.30 Federal Changes

In accordance with Federal Changes (49 CFR Part 18), 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 Agreement between the County 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.

1.31 Transit Employee Protective Provisions

The Contractor agrees to comply with applicable transit employee protective requirements as follows:

1. General Transit Employee Protective Requirements

To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C.

A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of qualification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

2. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities

If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub-recipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of qualification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

3. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-urbanized Areas

If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

The Contractor also agrees to include the applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

1.32 Qualifications and Assurances

The Contractor shall comply with all county, state and Federal rules as outlined in this RFP.

SECTION II

Special Conditions

2.1 Contract Award

The funding agencies for the project addressed in this RFP include the Federal Transit Administration (FTA), the New York State Department of Transportation and the County of Montgomery. Award of this Contract pursuant to this RFP is contingent upon the availability of funds.

2.2 Incurring Costs

Montgomery County is not liable for any costs incurred by the Proposers prior to issuance of a Contract to the successful Proposer. Montgomery County will be liable only for those costs incurred under the terms and conditions of this Contract during the Contract term.

2.3 Contract Type

The successful Proposer will be awarded a fixed price Contract for the performance of the work described herein.

2.4 Prime Contractor Responsibilities and Subcontracting

The selected Contractors shall be required to assume contractual responsibility for all Services, whether or not he/she provides them. Further, Montgomery County will consider the selected Contractor to be the sole point of contact with regard to contractual matters, including payment of any kind and all changes to the Contract.

Any subcontractors to be used must be identified by the Proposers in their proposals. It is Montgomery County's intention to award contracts to Proposers that will perform the majority of the work themselves. The Proposers should include: subcontractor name(s), planned work, and budgeted amount. If any subcontractors are proposed for roles which will be evaluated under section 3.9, the Proposer shall include all required information from the subcontractors for these roles (i.e. organizational background, relevant experience, organizational structure, resumes of personnel) in their proposal.

Any subcontractors not identified in the proposal will require written Montgomery County pre-approval. Any such subcontract, assignment, transfer, conveyance or other disposition without such prior consent shall be void and any services provided will not be compensated. Any subcontract or assignment properly consented to by the municipality shall be subject to all of the terms and conditions of this agreement.

Failure of the proposer to obtain any required consent to any assignment, shall be grounds for termination for cause, at the option of the municipality and if so terminated, the municipality shall thereupon be relieved and discharged from any further liability and obligation to the proposer, its assignees or transferees, and all monies that may become due under this agreement shall be forfeited to the municipality except so much thereof as may be necessary to pay the proposer's employees for past service.

The provisions of this clause shall not hinder, prevent, or affect any assignment by the proposer for the benefit of its creditors made pursuant to the laws of the state of New York. This agreement may be assigned by the municipality to any County, corporation, agency, or instrumentality having authority to accept such assignment.

2.5 Disadvantaged Business Enterprise Utilization

The New York State Department of Transportation DBE Program has established a 6% minimum utilization goal for DBE participation in FTA financially-assisted projects.

All Contractors shall be responsible for making good faith efforts in meeting these goals and must document efforts accordingly. All proposers must complete the appropriate forms in Section V and submit them with the proposal.

2.6 Contract Term

The implementation of the Services required under this contract shall begin January 1, 2019. All federal and state reporting deadlines supersede any other time frame enumerated herein and must be met with applicable deliverable reports two weeks prior to such deadlines.

The Contractor shall have no authority to start work, no payments will be authorized by Montgomery County nor will the County be liable for reimbursement for materials purchased or payment for any Services rendered by the Contractor prior to the award of the contract by resolution of the Montgomery County Legislature and execution of this instrument by the County Executive.

2.6.1 Contract Period

The term of the Contract shall be three (3) years after approval by the Montgomery County Legislature. The Contract may be extended at the sole discretion of Montgomery County for up to two (2) additional one-year periods beyond the original term. The pricing for the two additional one year periods shall be as provided in the contract.

2.6.2 Procurement Schedule*

Release RFP..... August 30, 2019
Questions Due..... September 9, 2019
Questions & Answers Posted..... September 10, 2019
Proposals Due/Opening..... September 20, 2019

*These are tentative dates and are subject to change

2.7 Monitoring

1. Assignment of Contractor's Personnel

The successful Contractors shall be required to instruct its personnel assigned to provide Montgomery County Public Transit Services to maintain a daily log showing the names of personnel assigned to each service vehicle; managers, drivers, dispatching personnel, mechanics etc. The log shall be available to the Montgomery County Economic Development & Planning Office during all normal work hours.

2. Reporting Requirements

The Contractor is responsible for submitting all reports for the previous quarter within five (5) business days of the first of each quarter. The selected Contractor required reports include, but is not limited to, the following:

- a) Quarterly Revenue Report
- b) Quarterly STOA Report
- c) Records of missed trip assignments, accidents and customer complaints
- d) Vehicle repair log

3. Status Meetings and Contract Records

Status meetings will be scheduled as needed. The County and/or its designees, the New York State Department of Transportation, the Federal Transit Administration, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the selected Contractor, that are directly pertinent to this contract, for the purpose of making audit, examination, excerpts and transcriptions.

The selected Contractor must maintain all required records for eight (8) years after the County makes final payment and all other pending matters are closed.

4. Driver Training/Staff Development Records

The Contractor is responsible for submitting all staff development and training activities for the previous month within five (5) business days of the first of each month. The selected Contractor required training reports include, but is not limited to, the following:

- a) Any mandated training required under NY State and/or federal regulation.
- b) Any general safety related/HIPAA compliance related training
- c) Customer service/professional development activities
- d) Remedial/Corrective training activities

Course curriculums/outlines and/or material handouts shall also be included within all report activity.

2.8 Payment Terms

Payment is to be made on a quarterly basis. During the Contract period, the Contractor shall submit to Montgomery County quarterly invoices with all required documentation, which will be used to reconcile invoices from the Contractor. Copies of invoices shall be submitted to Montgomery County Economic Development & Planning Office. Payments will be made within sixty (60) days of verification and acceptance of the invoices by Montgomery County.

The Contractor's invoice shall include:

- 1. The Invoice Cover Sheet
- 2. Contract Number
- 3. Invoice Number
- 4. A statement certifying that all information is accurate to the best of their knowledge
- 5. Total Invoice Amount

2.9 Contract Deliverables

Copies of all reports and documents required under the contract must be delivered at the time(s) specified in the contract.

2.10 Submission of Proposals

This will be a sealed proposal. Proposals must be signed by an official authorized to bind the Contractor to its provisions.

Proposals must include a statement as to the period during which the proposal remains valid. For this RFP, the proposal must be valid for at least 90 days. The contents of the Proposal of the successful Proposer may become contractual obligations, if a contract ensues, and shall be binding upon the Proposer.

2.11 Performance

Contractor shall perform all work diligently, carefully and in good and professional manner. Contractor shall obtain and maintain all permits and licenses required by public authorities

in connection with the performance of the work, and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors. Contractor shall conduct all operations in the Contractor's own name and as an independent Contractor, and not in the name of or agent for Montgomery County.

2.12 Ownership of Documents

Any documents, reports or data generated by the Contractor in connection with this project shall become the sole property of Montgomery County. The Contractor may retain copies of such items for its files. The Contractor shall not release any documents, reports or data from this project without prior written permission from Montgomery County.

2.13 Status of Contractor and Its Employees

For all purposes specified under the terms of this Agreement, the Contractor shall be considered an independent Contractor and as such, Montgomery County and/or its designees shall not be liable to the Contractor for benefits or coverage provided by the Worker's Compensation Law of the State of New York. And further, no person employed by the Contractor shall be considered an employee of Montgomery County for the purpose of Worker's Compensation coverage.

2.14 Independent Proposal Determination

By the submission of a Proposal, a Contractor certifies that, in connection with the Proposal:

1. The prices for Services and all other details of this offer have been arrived at independently without consultation, communication or agreement for the purpose of restricting competition with any other potential contractor regardless of whether or not such contractor submits a proposal pursuant to this request for proposals.
2. Unless otherwise required by law, the prices and all other details of the proposal have not been and will not be knowingly disclosed by the Contractor or any member of its organization prior to the awarding and signing of a Contract, regardless of whether or not such other Contractor submits a proposal pursuant to this RFP.

2.15 Overview of Requirements for Participation in State and Federal Public Transportation Programs Administered by the New York State Department of Transportation

All potential operators should be aware that all state and federal program funds for public transportation service administered by NYSDOT are awarded only to a municipal sponsor, such as a county, city, public transportation authority or Indian reservation. The municipal sponsor then may provide service under its own authority or search out, through a competitive process, a third party operator, who then contracts with the sponsor to provide the service.

In order to be eligible for State Transportation Operating Assistance (STOA), the service must be open and marketed to the general public, charge an appropriate fare, and be provided with vehicles capable of carrying 15 or more passengers. An exception to use 8-14 passenger vehicles may be granted on a case by case basis. Only municipalities are eligible to receive STOA funds.

To initiate STOA, a letter of intent from the municipality is sent to the NYSDOT Public Transportation Bureau indicating sponsorship of public transportation services for STOA. This is followed by a signed 119r agreement between the municipality and the third-party operator, if the municipality is not providing the service itself. Revenue vehicle miles and individual passenger counts must be kept for STOA reporting purposes. Quarterly statistics must be reported to NYSDOT via the municipality by the 17th of January, April, July & October following the end of a quarter.

Operators receiving STOA must also maintain accounting books and records in accordance with NYSDOT's prescribed Uniform System of Accounts and file annual reports with the Department.

Part 975 of the New York State Code of Rules and Regulations details all STOA program requirements. Additional information can be found at <https://www.dot.ny.gov/modal/bus> that outlines both the STOA Program and the Requirements for Passenger Authority.

SECTION III

Specific Requirements

3.1 Departmental Overview

Montgomery County's public transit system is administered through the Montgomery County Economic Development & Planning office. All parties are subject to review and approval through the Montgomery County Legislature and Montgomery County Executive.

3.2 Background and Intent

Montgomery County serves as the municipal sponsor for the New York State Transit Operating Assistance (STOA) program. The County is also the grantee for federal Section 5311, and other state and federal operating and capital grants.

Montgomery County is announcing this request for proposals to provide transportation services to Montgomery County residents which include, but is not limited to: older people, those living with a disability, veterans, and the community as a whole regardless of income.

Eligible Proposers are state or local government authorities, private, nonprofit organizations, and operators of public transportation. Applications will be accepted for services within Montgomery County's designated service area.

3.3 Purpose and Objectives

Montgomery County is seeking one (1) transportation provider to perform transportation services to improve access to transportation services for Montgomery County residents. All Proposers are to complete the Transportation Providers application located in Section IV of in this RFP. Montgomery County will not reimburse for any expenses incurred as a result of preparing a proposal.

The Contractors shall provide service to destinations within Montgomery County and surrounding areas as defined in the published routes and schedules.

Contractors shall identify a primary management staff member as the point of contact for communication with Montgomery County's management. This individual shall have a thorough understanding of the terms and conditions of the Contract, as well as all of the Contractor's service operations.

Contractors shall provide the necessary management and administrative personnel whose expertise shall ensure routes are performed efficiently.

Contractors shall be solely responsible for the provision of, and satisfactory work performed by, all of their employees. Contractors will perform a criminal background check on each job applicant to determine whether the individual is suitable for the job in which they might be employed.

Contractors shall comply with the requirements of employee liability, Worker's Compensation, employment insurance, Social Security, drug and alcohol testing and all other applicable local, state and federal laws.

All Services provided must meet New York State Department of Transportation (NYSDOT) requirements.

The Contractors shall implement a written corrective action plan to improve poor work performance and submit reports to the Economic Development & Planning Office when deemed necessary by Montgomery County.

Montgomery County recognizes that a high-quality operation begins with key personnel. The Contractors shall ensure that its drivers have accomplished, at a minimum, the following before they perform the Service:

1. Are properly licensed in the State of New York to provide the contracted services;
2. Are at least 21 years of age;
3. Have been a licensed driver for a minimum of three (3) years;
4. Are able to speak and understand English proficiently;
5. Possess a safe driving record as evidenced by:
 - a. No more than two moving violations during each of the last three (3) years prior to application for the Services;
 - b. Having three (3) full subsequent years with no violations, if license has ever been revoked.

Under the following circumstances, Montgomery County will require the Contractor to exclude staff from performing Services:

1. Safety-sensitive persons who incur driver's license suspensions or drug and alcohol violations that warrant the individual's immediate removal from the Services.
2. Occurrences of excessive complaints, rudeness, or other inappropriate behavior or appearance.
3. Three or more valid customer complaints within a rolling 30-day period. In such cases, the staff member shall be subject to a thirty (30) day suspension period. During this period, Montgomery County will evaluate whether the staff member is suitable to return from suspension.

If, for any of the above reasons or other reasons related to performance of the Services, the Contractor's staff member is determined to be unsuitable for performing the Services, Montgomery County will notify the Contractor in writing of one or more reasons that the staff member is considered unsuitable. Montgomery County may require immediate removal of the unsuitable staff member by the Contractor in such notice. If Montgomery County does not require immediate replacement of the unsuitable staff, within ten (10) days of receipt of such notice, the Contractor shall present Montgomery County with a plan for correcting the performance deficiencies within a thirty-(30) day period thereafter. If Montgomery County either rejects the plan or the staff member's performance deficiencies are not corrected to Montgomery County's satisfaction within the 30-day corrective plan period, Montgomery County shall so notify the Proposer and the Proposer shall immediately remove the staff member from performing the Services.

UNDER NO CONDITION WILL AN APPLICANT BE ACCEPTED AS A DRIVER FOR THIS SERVICE IF HE/SHE HAS BEEN CONVICTED OF A DRUG OR ALCOHOL OFFENSE WITHIN THE PAST FIVE (5) YEARS. DRIVERS WILL ALSO BE SUBJECT TO ANY APPLICABLE FEDERAL, STATE, OR LOCAL MANDATORY DRUG TESTING REQUIREMENTS.

The Contractor shall provide the Services in accordance with the terms of the executed Contract and under the rules, regulations, and supervision of the County.

Montgomery County shall define the parameters that govern the Services and shall ensure that the Contractor complies. The following sections define the various features of the Services.

3.4 Project Requirements

Montgomery County requests proposals to provide transportation services in accordance with the requirements of this Request for Proposals. Eligible Proposers shall include state or local government authorities, private, nonprofit organizations, and operators of public transportation services.

3.5 Scope of Services

The County of Montgomery, located in New York State, invites proposals for mass transportation services, specifically the operation of the Montgomery County Transportation System Commuter Run Service and the Montgomery Area Xpress (MAX) service for a three-year period after approval by the Montgomery County Legislature. The Contract may be extended at the sole discretion of Montgomery County for up to two (2) additional on-year periods beyond the original term. The successful Contractor will utilize two (2) County-owned vehicles (28 passenger with wheelchair lift) and one (1) County-owned commuter vehicle (55 passenger with wheelchair lift). The Contractor will also be required to provide one (1) additional commuter vehicle for at least 47 passengers with a wheelchair lift and provide for spare vehicles as needed. The Contractor will provide turnkey service: including all backup vehicles; vehicle maintenance, maintenance and operations facilities; customer service; fare collection and auditing; and, system management.

3.5.1 General Description of Scope of Services

Montgomery County requires the Contractor to provide deviated fixed-route public transportation services “Services.” The Contractor shall provide all Services required in support of transporting individuals to designated stop locations. All Services provided by the Contractor must meet Federal Transit Administration (“FTA”) requirements.

Montgomery County or its designee will be responsible for overseeing all aspects of the Services, which shall include vehicle/equipment inspections; ensuring compliance with local, state and federal requirements; reconciling and benchmarking service quality; implementing the corrective actions that improve poor performance; and paying the Contractor for Services rendered based on Contract specifications.

The Contractor shall meet all requirements described in this Scope of Services, including, but not limited to, safety, fares, on-time performance, reporting, billing, insurance coverage, any appropriate licensing, and other legal requirements.

The contractor agrees to lease certain capital equipment from Montgomery County for the annual fee of \$1.00 per bus. The Contractor must abide by all applicable rules and performance standards established under the State Operating Assistance (STOA) program and any other state or federal programs that provide operational assistance, operational grants or fleet purchase subsidies.

3.5.2 Detailed Scope of Services

In addition to the duties and responsibilities detailed in this Scope of Services, the Contractor shall use its best efforts to assist Montgomery County in meeting its obligations to provide the highest quality and most efficient service to the public. Changes may be required by Montgomery County, from time to time, to meet these requirements or to refine the method of operation. If any such changes will affect Contractor costs, they will be addressed through a contract amendment.

The Contractor agrees to provide the Montgomery County mass transportation operational services and to bear the financial obligations necessary for the operation of the Montgomery County Transportation Commuter Run Service and by operating two (2) County-owned buses for the Commuter Transit Service, primarily between the Village of Fonda, the City of Amsterdam and commuter destinations in the Albany/Capital District area and two (2) buses for the Montgomery Area Xpress Service, primarily along State Highway 5 and 5S between the Town of St. Johnsville and the City of Amsterdam limits. The proposed schedule is available https://www.co.montgomery.ny.us/sites/public/government/mobility/Mobility_Document/s/ScheduleCurrent.pdf, along with the proposed route http://www.browntours.com/images/Documents/max_map.pdf.

The Contractor shall be responsible for all tasks (except those items specifically defined herein as Montgomery County responsibilities) including but not limited to:

1. Contractor Responsibilities:

- a. Operating vehicles that comply with required specifications.
- b. Maintaining all vehicles in accordance with standards set forth herein.
- c. Maintaining a two-way mobile communications system that meets service performance requirements detailed herein.

- d. Providing an adequate number of qualified staff to handle all contract requirements.
 - e. Hiring and ensuring training of staff in accordance with the standards set forth herein.
 - f. Providing on-the-road supervision to ensure that service is performed according to standards set forth herein.
 - g. Collecting the appropriate fares from riders.
 - h. Recording actual service information (stop location passengers, stop location times, mileages, incidents, etc.)
 - i. Documenting same-day service issues and adding same day notes to the daily incident log.
 - j. Monitoring performance and insuring corrective action measures as needed.
 - k. Preparing and providing billings and service reports as required by Montgomery County.
 - l. Obtaining Montgomery County's written consent before entering into any subcontract affecting the Services not identified in the proposal.
 - m. Ensuring that all data is accurately updated and submitted in a timely manner as set forth in contract.
 - n. Initial training and periodic retraining of the Contractor's staff on the Services' policies and procedures.
 - o. Assuring that drivers and mechanics have appropriate commercial driver's license (CDL) per the State of New York.
 - p. Ensuring service quality by promptly addressing customer comments and complaints.
 - q. Providing Montgomery County personnel with daily monitoring records of service incidents to determine and enforce any corrective actions, exclusions, reductions or suspensions from the Services.
 - r. Providing information regarding the Services to the community.
 - s. The Operator under contract will be responsible for securing the appropriate NYSDOT operating authority through that agency. The operator cannot perform contract services without Permanent Authority or Temporary Authority while applying for Permanent Authority. It is advised that once a contract is awarded that the Operator pursue and satisfy these needs in a timely manner.
2. **MONTGOMERY COUNTY Responsibilities:**
- a. Establishing service policies and standards, and communicating these to the Contractor and riders.
 - b. Overseeing records of service, service incidents to determine and enforce any corrective actions, exclusions, reductions or suspensions from the Services.
 - c. Monitoring the Contractor's performance and insuring corrective action measures as needed.

3.5.3 Service Overview

This Contract defines the requirements that govern the Services that Montgomery County shall ensure that the Contractor complies with all requirements of this Contract. During the term of this Contract, Montgomery County, the NYSDOT and/or the FTA may change its rules, policies or regulations and such changes may require a change in the Services required under this contract. In such cases, the County shall notify the Contractor of the change and the Contractor shall comply with changes to the Services as required by Montgomery County, NYSDOT or the FTA. If any such changes will affect Contractor costs, they will be addressed through a contract amendment. The following sections define the Services' requirements.

The Contractor will work closely with the County to determine and meet community needs and to propose options and alternatives. The Contractor shall demonstrate an ability to work closely with the County towards continued coordination of all transportation systems/networks, including private, public, and not-for-profit agencies in order to maximize use of any and all existing vehicles, to fulfill unmet needs and to reduce duplication of service.

Total revenue hours are not inclusive of: pre-trip/post-trip inspections, maintenance, driver breaks, driver changes, layovers, and deadhead miles. The contractor shall be required to maintain this minimum provision. Should service be modified to the extent that hours of service, number of buses or total miles are affected by more than 10%, the Contractor and/or the County can enter into negotiation to modify the contract. The County, at any time, may curtail service in order to stay within budget and this curtailment will also be grounds for renegotiation of the contract amount at any time during the term of the contract.

The Contractor and its employees shall not solicit or accept tips, gifts or gratuities of any kind, no matter what the value. Any employee of the Contractor doing so shall be excluded from driving or otherwise participating in the Services.

3.5.4 Services Coordination

Under Federal transit law, as amended by SAFETEA-LU and updated through MAP-21, Montgomery County is required to utilize a coordinated plan to maximize collective coverage by minimizing duplication of Services provided under Section 5310 and 5311 programs.

If over the course of performance of transportation services under this contract, it becomes apparent to Montgomery County that different Contractors are regularly providing a duplication of services (transporting individuals to and/or from the same or similar locations at the same times), Montgomery County will work with both Contractors to determine if there is an equitable way to combine the duplicated routes. For example, if each Contractor had sufficient multi-passenger vehicles available, Montgomery County will determine whether a change of route/schedule should be entertained.

1. Dispatch Policy

The Contractor shall provide appropriate dispatch staff to manage the driver check-in and check-out processes, the assignment of vehicles and trips, and oversee the on-time performance of routes. All on-the-road service adjustments shall be communicated to the Economic Development & Planning Office at Montgomery County; which includes on-time performance issues, road conditions, etc.

The Contractor's dispatch staff shall also keep a daily incident log in which unusual or extenuating circumstances beyond the driver's control that effect route performance are recorded. The daily incident log shall contain, at minimum, the date, time periods, and a description of unusual or extenuating circumstances related to that route.

If the Contractor is unable to perform an assigned stop location within the on-time performance standards, the Contractor shall notify Montgomery County to allow for public notice.

Frequent on-time performance issues shall cause Montgomery County to evaluate the Contractor's noncompliance with contractual obligations. Each incident that negatively affects the Contractor's overall performance may result in the Contractor's removal from the Services.

2. Trip Performance Policy

The Contractor's staff shall act with courteousness, professionalism, and with special sensitivity for all riders. The Contractor shall be solely responsible for the provision and satisfactory work performance of all employees as described in this contract. Standard dress/uniform and visible photo identification are required. Staff shall actively promote, and support County operated public transit services.

3. Mobility Aid Securement and Use of Seat Belts Policy

Each passenger seating area shall be equipped with a seat belt and each wheelchair securement position shall be equipped with a securement device that meets ADA standards, and a seat belt and shoulder harness. All mobility aids located in the wheelchair securement area shall be secured by the driver using the provided system. The Contractor is responsible to instruct drivers on proper wheelchair securement processes and evaluate driver skills on an annual basis.

Contractor shall provide County documentation that staff are trained in using the wheelchair lift and securement systems.

Riders who use wheelchairs shall be offered the use of the shoulder harness, but shall have the right to refuse its use. Riders who use three-wheeled scooters shall be strongly encouraged to transfer to a passenger seat. Scooter users shall be permitted to remain in the scooter, but drivers shall notify dispatchers about the refusal to transfer to a seat.

If a wheelchair passenger refuses to be secured while transported, the driver shall inform the passenger of the potential risk of doing so, and shall ask that the passenger signs a disclaimer to relieve the Contractor and/or Montgomery County from any liability that might result from the refusal to be secured. The driver shall immediately report his/her passenger's refusal to the Contractor's Dispatch to ensure the incident is properly logged on the daily incident log and driver's daily log.

4. Service Interruptions Policy

In the event of service difficulties, including, but not limited to, inclement weather or vehicle failures, which result in an interruption of service, the Contractor shall, immediately upon notification by the driver or otherwise, define a plan for continuing service at the earliest possible time to ensure riders are safely transported to their destinations in a timely manner.

The Contractor will notify the Economic Development & Planning Office immediately of the interruption of service and its corrective action plan.

The Contractor is responsible for obtaining all notifications of construction work on their route that would impede their ability to service the client on time.

Please see website www.dot.ny.gov for all construction projects.

All accidents or incidents associated with the Services (regardless of the severity or location) shall be reported to Montgomery County and the Economic Development & Planning Office within twelve (12) operational hours of occurrence. Accidents involving any injuries are to be reported to Montgomery County and the Economic Development & Planning Office within two (2) operational hours of occurrence. The initial report shall be made by telephone. Written reports shall follow within five (5) working days. A police report shall be filed immediately by the Contractor for any accident involving Montgomery County's or the Contractor's vehicles. The Contractor shall obtain a copy of any police report pertaining to the Services provided on behalf of Montgomery County and provide the report to Montgomery County.

3.5.5 Requirements for Contractor's Personnel Policies with Respect to the Services

The Contractor shall have personnel policies in effect during the term of the Contract that comply with all County, State and Federal laws.

The Contractor shall have established standards for recruitment and hiring of staff to perform Montgomery County funded Services. These standards shall be submitted in detail to Montgomery County for approval. Montgomery County retains the right to review the Contractor's personnel policies and the list of personnel assigned to the Services. Proposed changes in key personnel incumbents and/or job duties shall be subject to review and approval by Montgomery County.

The Contractor shall provide the necessary management and administrative personnel whose expertise shall ensure routes are performed efficiently.

The Contractor shall be solely responsible for the provision of, and satisfactory work performed by, all its employees. A criminal background check shall be performed by all Contractors for each job applicant to determine whether the individual is suitable for the job in which he/she might be employed. The Contractor shall pay all employee and/or subcontractor wages and benefits, without any additional expense to Montgomery County. The Contractor shall comply with the requirements of employee liability, Worker's Compensation, employment insurance, Social Security, drug and alcohol testing and all other applicable local, state and federal laws. Montgomery County shall have the right to demand removal from the Services, for reasonable cause, any personnel furnished by the Contractor. The Contractor shall ensure that all personnel of any subcontractor meets the requirements identified in sections 3.5.5 through 3.5.11.

Montgomery County recognizes that a high-quality operation begins with key personnel; therefore, the Contractor's minimum staffing requirements are described below.

1. Management Staff Requirements

The Contractor shall identify a primary management staff member as the point of contact for communication with Montgomery County's management. This individual shall have a thorough understanding of the terms and conditions of the Contract, as well as all of the Contractor's service operations.

The System Manager shall oversee day-to-day operations to ensure contract compliance. The System Manager shall have a minimum of three (3) years of transit management experience. Montgomery County requires the System Manager be located in Montgomery County and available to Montgomery County both during and after operating hours.

The Contractor shall submit an organizational chart listing all key personnel with RFP submission. Any changes to key personnel; vacancies or re-assignments, will be reported in writing to Montgomery County and the Economic Development & Planning Office within five (5) days of change.

2. Driver's Staff Requirements

The Contractor shall ensure that its drivers have accomplished the following before they perform the Services:

- a. All drivers must be qualified under NYS DMV 19-A regulations
- b. No driver shall use alcohol, narcotics, illegal drugs or drugs that impair ability to perform while on duty and no driver shall abuse alcohol or drugs at any time.
- c. All drivers must wear or have visible, easily readable company identification.
- d. At no time shall drivers smoke, eat or consume any beverage while in the vehicle or while involved in rider assistance entering or exiting the vehicle or while in the presence of any rider.
- e. Drivers will not wear any type of headphones at any time while on duty.
- f. All drivers shall be courteous, patient and helpful to all passengers and be neat and clean in appearance.
- g. Drivers engaged in transportation under this Agreement shall be properly trained to provide safe, courteous and reliable transportation at all times.

3.5.6 Management, Administrative and Personnel Requirements with Respect to the Services

When providing transportation services, the Contractor and its staff are required to perform as described below:

1. Professionalism Requirements

The Contractor, its drivers, and other staff shall each maintain a pleasant, courteous, and professional demeanor, while performing Services. Rudeness or unprofessional behaviors by anyone shall be considered unacceptable and may result in Montgomery County's request for removal of the individual from the Services.

Drivers are prohibited from using cell phones or texting while driving. However, drivers may use two-way radios to communicate business related information. Drivers may use cell phones once their vehicle is stationary, in the event of a vehicle failure or an emergency.

2. Drivers' Materials and Supplies Requirements

The Contractor shall ensure that all staff remains in possession of required materials and supplies while performing Services.

3. Staff Turnover Requirements

The Contractor shall endeavor to minimize staffing turnovers and retain a high quality work force to perform the Services.

4. Confidentiality Requirements

The Contractor, including all of its employees, shall treat all information, which is obtained by it through its performance under this contract as confidential information, and shall not use any information so obtained in any manner except as necessary for the proper discharge of its obligations. The Contractor agrees to sign and abide by any subsequent agreements with respect to confidentiality as may be required by the Health Insurance Portability Act and any other similar laws.

The Contractor and its staff shall comply with, and assure the compliance of its employees with, the information disclosure restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to provide the information to Montgomery County or the Federal Government in order to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Contract.

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

5. Requirements for Exclusion of Staff with Negative Effects on Services

Under the following circumstances, Montgomery County shall require the Contractor to exclude staff from performing the Services:

- a. Safety-sensitive persons who incur driver's license suspensions or drug and alcohol violations that warrant the individual's immediate removal from the Services.
- b. Occurrences of excessive complaints, rudeness, or other inappropriate behavior or appearance.
- c. A habitual pattern of arriving late to published stop locations.
- d. Three or more valid customer complaints within a rolling thirty (30) day period. In such cases, the staff member shall be subject to a thirty (30) day suspension period, while Montgomery County evaluates whether the staff member is suitable to return to perform Services.
- e. Multiple violations for failing to have a valid identification card and window plaque in his/her possession while performing the Services.
- f. The driver is found to be non-compliant of ADA regulations; i.e. failure to announce stops, etc.

If, for any of the above reasons or other reasons related to performance of the Services, the Contractor's staff member is determined to be unsuitable for performing the Services, Montgomery County or its designee shall notify the Contractor in writing of one or more reasons that the staff member is considered unsuitable. In such notice, Montgomery County or its designee may require immediate removal of the unsuitable staff member from performing the Services. If Montgomery County or its designee does not require immediate removal of the unsuitable staff, within ten (10) days of receipt of such notice, the Contractor shall present Montgomery County or its designee with a plan for correcting the performance deficiencies within the following thirty (30) day period. If Montgomery County or its designee either rejects either the plan or if the staff member's performance deficiencies are not corrected to Montgomery County or its designee satisfaction, within the 30 day corrective plan period, Montgomery County or its designee shall so notify the Contractor and the Contractor shall immediately remove the staff member from performing the Services.

7. Requirements for Exclusion of Staff in Possession of Firearms and Weapons

When working on the Services, the Contractor and its staff may not have firearms or other weapons in their possession or in vehicles operated in the Services. Any employee of the Contractor found in violation of this requirement shall be immediately excluded from participating in the Services.

3.5.7 Drug and Alcohol Policy and Testing Program

Federal Transit Administration (FTA) regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations” (CFR Part 655 as amended) and “Procedures for Transportation Workplace Drug and Alcohol Testing Programs” (49 CFR Part 40), require the establishment and implementation of an alcohol misuse and anti-drug program. Please complete Form C in proposal in section V of this RFP.

3.5.8 Contractor’s Qualification Requirements

The Contractor’s failure to obtain the proper clearances, qualifications, and insurances shall cause it to be considered non-awardable for a Contract.

3.5.9 Vehicle Requirements

1. In-Service Vehicles

The Contractor must be capable of performing the majority of the Services outlined in this RFP with their own employees and facilities. The Contractor agrees to lease certain capital equipment from the Montgomery County for the annual fee of \$1.00 per bus. The Contractor must abide by all applicable rules and performance standards established under the State Operating Assistance (STOA) program and any other state or federal programs that provide operational assistance, operational grants or fleet purchase subsidies. The Contractor shall ensure that the service vehicles meet all Federal Motor Vehicle Safety Standards (FMVSS), Federal and State of New York vehicle design standards, ADA design standards, and other applicable industry standards.

The Contractor shall equip all vehicles with fire extinguishers, and ten (10) person minimum first aid kits that shall include, but not be limited to: a variety of plastic, gauze and fabric bandages; dressing pads, triangular sling bandage, antiseptic cleansing wipes, first aid/burn cream, first aid tape, scissors, tweezers, exam gloves suitable for handling exposure to blood and other bodily fluids and a first aid guide regulation.

The Contractor shall equip each vehicle with placard that contains the driver’s name and Montgomery County’s telephone number for purposes of comments or complaints by riders. This placard must be affixed to the interior of each vehicle in plain sight of the client(s) while the vehicle is performing service under the Contract.

The New York State Department of Transportation (NYSDOT) issues Certificates of Authorities to carriers who meet safety and insurance requirements of the law during the annual vehicle safety inspection. The Contractor shall confirm its compliance with Montgomery County annually, by submitting its updated Certificates of Authority. The Contractor’s failure to comply with these requirements shall cause its exclusion from Services until compliance is met to Montgomery County’s satisfaction or termination of the Contract.

The Contractor shall be responsible for conducting all maintenance, repair, and warranty work on vehicles and the administration of all paperwork with the dealer, manufacturer or other authorized vehicle facility.

The Contractor is required to report all damage to vehicles, and repair any associated damages within 30 days of the occurrence. Contractor will be held responsible for all fees associated with repairs.

2. Vehicle Cleanliness Requirements

Vehicles used in the Services shall be clean and free of dirt and litter. Drivers and passengers shall not eat, drink, or smoke in any vehicle used in the Services (except passengers specifically authorized by Montgomery County for reasons related to their disability). The vehicle's exterior shall remain clean and free of dirt or grime while performing the Services. Vehicles shall be cleaned daily, with a thorough cleaning and scrubbing of the full interior at least once per week.

Montgomery County requires the Contractor to perform a vehicle cleaning process that guarantees the following for each vehicle used in the Services:

- a. Interior/exterior windows free of dust, fingerprints and head prints.
- b. Dust-free seats, dashboards, wheel wells, rails, ledges, etc.
- c. Interior areas free of dirt paper, gum, debris, liquid spills, graffiti, damage, etc.
- d. Exterior areas free of damages, dirt, grime, graffiti, salt residue, etc.

Montgomery County has wrapped vehicles and the Contractor should pay attention to cleaning without damaging the wraps.

3. Maintenance Requirements

The Contractor shall be responsible for all vehicle maintenance. The Contractor shall maintain vehicles in such a way as to, at all times, protect the safety of riders and ensure the most reliable service possible. The Contractor shall, at its expense, maintain all vehicles used for this program in accordance with the manufacturer's specifications and/or in accordance with the state's vehicle maintenance standards. Where duplicate standards exist, the Contractor shall be required to maintain vehicles in accordance with the stricter standards, whether performed by the Contractor or subcontractors. Maintenance shall be done at times that shall ensure that vehicles qualified for the Services are available for use in Services. It is not the intent of this requirement to preclude necessary maintenance during normal hours; it is only to ensure that the maximum number of vehicles shall be available for service during the service day.

The Contractor shall comply with all OSHA regulations. The Contractor shall dispose of any hazardous waste generated by its operation in compliance with all E.P.A. and State of New York regulations. The Contractor shall comply with all State Storm Water Runoff Act requirements under the Federal Clean Water Runoff Act. The Contractor shall ensure that all mechanical parts and material meet or exceed O.E.M. specifications.

Montgomery County, or its designee, may inspect the vehicles at any time, unannounced and announced, either at the Contractor's location or while the vehicle is in service. If, in the opinion of Montgomery County, a vehicle does not meet Montgomery County safety standards, has failed to be maintained or inspected in accordance with the manufacturer's specified standards, it may be "red tagged." A vehicle that has been "red tagged" shall not go into Services and/or shall be immediately removed from the Services. A "red tagged" vehicle shall not be released for service until such time as the problems associated with it have been rectified by the Contractor and verified by Montgomery County. At no time may vehicles be placed into service in unsafe condition, or with broken or cracked windows, non-functional major systems, such as heating, air conditioning or lighting, major leaks or smoking exhaust, or loose or dragging components.

4. Preventive Maintenance Requirements

Preventive maintenance shall be performed or obtained by the Contractor in accordance with manufacturer recommendations for all vehicles and after-factory systems and subsystems. A comprehensive preventive maintenance program shall be established that ensures compliance with all manufacturer's recommendations. Should any bus used by the Contractor in the delivery of services provided, need to be taken out of operation at any time during the term of this agreement, the Contractor agrees that it will notify the Montgomery County of such as soon as practicable and make all necessary repairs and maintenance to put said bus back into operation as soon as possible. The Contractor further agrees to utilize its own equipment during such time to provide for continuity of operational services for the system should County-owned or leased equipment not be available or practicable. For all Capital Equipment, the Contractor agrees maintain copies of the maintenance and repair orders and all pre and post trips as well as copies of inspection reports conducted by NYSDOT Motor Vehicle Inspectors. Said documentation shall be available to the Montgomery County for review upon request.

Preventive maintenance reports shall be kept in the individual vehicle file as reference for future PMIs. PMI reports are subject to review by Montgomery County when necessary.

The Contractor shall use quality materials when doing any repairs to the vehicles. The lubricants used shall meet or exceed the manufacturers' standards.

The Contractor is encouraged to utilize Montgomery County based maintenance facilities for subcontractors in order to minimize deadhead mileage and hours excluded from service.

5. Safety/Inspections

The Contractor shall perform daily pre-trip safety inspections of vehicles prior to beginning each day's service and conclude with a daily post trip safety inspections of vehicles upon completion of the route or whenever a driver change is necessitated. In order to pass inspection, vehicles must be in compliance with all applicable government regulations. Montgomery County may inspect vehicles at any reasonable time and may bar a vehicle from service until the problem(s) are corrected. Any vehicle not passing the daily pre-trip inspection will not be used for service until the reason for failing inspection has been corrected. The Contractor shall, to the extent possible, schedule bus inspections within Montgomery County so as to reduce non-revenue mileage on the vehicles.

6. Vehicle Inspection Requirements

The Contractor shall ensure that all vehicles are inspected in accordance with State of New York and federal DOT requirements.

7. Fuel, oil and other lubricants and fluids Requirements

The Contractor shall be solely responsible for providing all fuel, oil, and other lubricants and fluids used while providing the Services.

3.5.10 Communication Equipment & Software Requirements

1. Dedicated Email Accounts and Contact Lists Requirements

The Contractor shall provide Montgomery County with email addresses for the Contractor's staff member who will be responsible for communicating effectively and receiving essential reports and other documentation. At least one (1) alternate email address shall be given for each, in case there are problems with sending to the primary address.

3.5.11 Performance Requirements with Resulting Performance Penalties or Service Exclusions

The Contractor's quality of service, as reflected in the four (4) performance requirements detailed in this Section is very important. Therefore, the Contractor shall meet all stated performance requirements, as its failure to do so shall result an assessment of penalties against the Contractor; and may also require the implementation by the Contractor of corrective actions or termination of the Contract by Montgomery County.

Montgomery County reserves the right to make unannounced visits to the Contractor's facilities to inspect records, vehicles, and equipment relating to safety and quality of service. Such inspections shall include, but are not limited to, trip records, billing records, accident records, vehicle records, training procedures, employee training and performance records.

The Contractor and Montgomery County agree that the amount of actual damages caused by the Contractor because of the failure to meet a specific performance requirement would be difficult to calculate precisely, but that the sums set forth in this section for each failure by the Contractor to meet a performance requirement represents a reasonable approximation of such damages. This provision is intended by the parties to compensate the County in the event of the Contractor's failure to meet a performance requirement, not to penalize the Contractor, and shall not be intended to bar the County from recovering actual, consequential damages or from seeking other legal or equitable remedies for other breaches of this Contract.

1. Accidents and Incidents Requirement

The Contractor is expected to have not more than one (1) preventable accident for every 100,000 vehicle-miles of service provided.

All accidents or incidents associated with the Services (regardless of the severity or location) shall be reported to Montgomery County within twelve (12) hours of occurrence. Accidents involving any injuries are to be reported to Montgomery County within two (2) hours. The initial report shall be made by telephone. Written reports shall follow within five (5) working days. A police report shall be filed immediately by the Contractor for any accident involving Montgomery County's or the Contractor's vehicles. The Contractor shall obtain a copy of any police report pertaining to the Services provided on behalf of Montgomery County and provide the report to Montgomery County.

The Contractor is also required to report all vehicle accidents to the Statewide Transportation Incident Command Center (STICC) through the region 2 office of the NYSDOT.

Performance Penalties

If the Contractor fails to report an accident or incident to Montgomery County, or its designee, within the required period identified above, the contract is subject to termination.

2. Staff's Qualification Requirement

The Contractor is expected to have not more than four (4) staff qualification violations within a twelve (12) month period.

The Contractor shall ensure that its staff has met all qualifications set forth in this Scope of Services. Qualifications include, but are not limited to, undergoing the appropriate training, being in consistent possession of all Montgomery County issued identification cards and plaques, complying with drug, alcohol and drivers' licensing requirements, etc.

3. Vehicle Maintenance Requirement

The Contractor is expected to have not more than three (3) improper vehicle maintenance violations within a twelve (12) month period. The Contractor shall ensure that vehicles used for the Services to be provided under this contract are maintained in accordance with the contract requirements. Major body damage to vehicles shall be reported to Montgomery County immediately. Minor body damage shall be reported to Montgomery County within twelve (12) hours of occurrence.

If a vehicle is in service with body damage, the Contractor shall provide proof that there is a reason the vehicle could not be immediately repaired. Montgomery County may order that a vehicle be immediately removed from the Services, if it fails to meet any of the required standards.

To facilitate customer service and improve vehicle life, vehicles shall remain clean and free from body damage (other than minor scratches). If vehicles are inspected by Montgomery County staff and found not in compliance with these requirements, written notice shall be served. If the contractor does not bring its vehicles up to standard within 30 days, the contractor may be subject to liquidated damages.

4. Uniform Dress and Appearance Requirement

The Contractor is expected to have not more than twelve (12) uniform dress and appearance violations within a twelve (12) month period. The Contractor shall require a uniform, which conveys a professional image, to be worn by all drivers when operating a vehicle in-service.

The Contractor shall see that drivers' uniforms remain in good repair and do not appear old or worn out. Uniforms that are not in good repair shall be replaced at no cost to Montgomery County. Montgomery County may require drivers to have new uniforms should appearances not meet the defined standard.

3.5.12 Performance Monitoring and Benchmarking

On a periodic basis, Montgomery County may evaluate each Contractor's performance based on the requirements of Section 3.5.11.

3.5.13 Data Collection and Reporting Requirements

The Contractor shall provide reports as detailed by Montgomery County in this Contract. The Contractor shall also provide additional information upon request by Montgomery County during the term of the Contract. At a minimum, the Contractor shall provide the following reports:

1. Staffing Roster

The Contractor shall maintain a current roster of the staff members qualified to perform the Services, which includes the individual's name, date of birth, and valid driver's license number. The Contractor's updated roster shall be made available upon request of Montgomery County and/or designee. This list shall be used by Montgomery County for the on-street spot inspection of drivers and to confirm compliance with other performance requirements.

2. Vehicle Roster

The Contractor shall maintain a list of all vehicles registered with Montgomery County for use in the Services. This list shall include the following information about each vehicle: the make and model, date of manufacture, seating capacity, vehicle identification number (VIN), fleet number, and current mileage. Contractor will make available upon request.

The Contractor shall maintain a separate file for each Montgomery County registered vehicle, which shall include a complete maintenance and repair history, inspection and licensing information, and documentation of the same.

3. Vehicle Maintenance Records

The Contractor shall submit a quarterly log of all repairs performed on the vehicles used for this Contract to Montgomery County, and must keep all supporting receipts for Montgomery County to review upon request.

4. National Transit Database Reporting (NTD)

The Federal Transit Administration (FTA) requires NYSDOT to report annually specific operating, performance and vehicle data as a condition of federal funding. To comply with FTA requirements, the Contractor shall provide the information required, in a timely manner, for Montgomery County to complete the NTD reporting to NYSDOT through the Annual Report request. Montgomery County shall notify the Contractor, in writing, of the required information and the due date for such information.

5. Local, State, and Federal Reporting

The Contractor shall maintain all operational records consistent with the FTA's and NYSDOT's policies for record handling. Such records include, but is not limited to: trip manifest, driver's trip logs, dispatch records, billing records, accident reports, and any other paper or magnetic records relating to the operation of the Services. These records shall be surrendered, on demand, and at no additional cost, to Montgomery County.

6. Record Retention and Inspection

The Contractor shall maintain all required operational and financial records, including required reports, as well as original data collection forms (incident reports, accident reports, timesheets, etc.), for eight (8) years after final payment and all other pending matters are closed.

3.5.14 Service-Related Meetings

Service-related status meetings shall be scheduled by Montgomery County as needed. The Contractor shall attend such meetings. These meetings serve to maintain open and frequent communications between Montgomery County, health and human service providers, businesses, education institutions, and the Contractor. Occasionally, additional meetings may be required, particularly during the beginning of the Contract. Unless otherwise notified, a representative from the Contractor's management, or another employee with decision-making authority, shall attend all meetings.

3.6 Submission of Proposals

Proposals, with a cover letter, must be submitted by the date and time specified in the RFP cover letter. The responsibility of proposal delivery is solely that of the Proposer, notwithstanding delays resulting from postal handling or any other reason.

3.7 Content of Proposals

Proposals should be prepared simply and economically, providing a straightforward, concise description of the Proposer's capabilities to satisfy the requirements of the RFP. Submission of technical literature, display charts, or other supplemental materials are the responsibility of and within the discretion of Proposers. Montgomery County shall not be liable for any expense incurred in the preparation of proposals.

3.7.1 Technical Proposal

1. Description of Applicant's Organization

Provide a brief synopsis of the organization including when and where incorporated, major business activities, prior business activities, corporate structure (corporation, sole proprietorship, public agency, etc.), financial information and corporate officers of the organization/firm.

2. Relevant Experience

Fully describe your company's relevant experience and responsibilities to the objectives and tasks outlined in this RFP. Please include the following information:

- a. Describe the firm's experience providing transportation services; including the time the firm has been in the transportation business, the types of service provided, and other pertinent information that will help Montgomery County understand your firms' capability to provide the required Services; specifically noting rural deviated fixed route service and if applicable, coordination with other systems.
- b. Describe the firm's experience providing Services under federal or state programs.
- c. Describe your customer satisfaction record. This may include both individuals and government entities for which you have provided Services.

- d. Provide the names and telephone numbers of three (3) references from organizations that will confirm your proven ability to perform the Scope of Services outlined in this RFP.

3. Organizational Structure/Personnel

Fully describe the organizational structure of your company, providing an organization chart reflecting the relationship of staff assigned to this project to the overall company structure. Describe (in specific terms) the level of corporate responsibilities and duties that will be provided to support the operation in Montgomery County. Indicate experience and responsibilities of all personnel to be assigned to provide the Services required under this contract. Provide resumes and any other information detailing the experience and qualifications of all management personnel to be assigned to this project. Include the anticipated staff you agency anticipates will commit to perform the services.

4. Description of Facilities

Describe the facilities you will use to manage and provide transportation services in Montgomery County. Describe any equipment and/or software programs you use that you believe will enhance your ability to provide the required Services.

5. Description of Maintenance Program

The successful proposer shall be responsible for all maintenance, regardless of whether vehicles are owned by the contractor or by Montgomery County. To ensure reliable services are provided to the citizens of the County, describe in full detail, the proposed preventive maintenance program (including vehicle cleanliness), indicating intervals between service maintenance, events performed at each service, etc. Describe how routine maintenance will be performed on site. Also, describe proposed actions in event of unforeseen breakdowns while vehicle is in revenue service. Proposer is to include their NYSDOT inspection profile for the past three years. If the proposer is not part of the NYSDOT inspection program", the proposer must include their written maintenance plan and vehicle inspection records for the past three years.

6. Description of Driver's Hiring Criteria/Training

Fully describe the proposed procedures for recruitment, screening, selection, and training of drivers. Proposers should note the provisions within this RFP, which indicate that a mandatory program of alcohol and drug testing as prescribed by the Federal Transit Administration must be maintained by the proposer.

7. Services Proposal

Provide a detailed description of your technical plan for fulfilling the required objectives and tasks as outlined in this RFP. Include the following in this description:

1. A statement of understanding of Montgomery County's goals and the service requirements to which this RFP is addressed.
2. A work plan for providing each function necessary to deliver the required Services. Specific functions to be described include your firm's approach to overall management, confidential information management, marketing,

dispatching, scheduling, road supervision, and maintenance management. Other elements of the approaches and methods your firm uses to provide transportation services that you believe will enhance your ability to provide the Services required under this contract should also be described.

3. A description of your firm's approach to customer service.
4. A description of your firm's approach to determining and addressing the transportation needs of the community.
5. A description of your firm's approach to safety as it applies to vehicle management, and driver training and management.
6. A description of your firm's performance monitoring and quality control.
7. Your expected interface with Montgomery County staff.
8. Any anticipated problems with the work required under this RFP, and your proposed alternative solutions.

8. Safety Record and Accident History

Fully describe your company's safety and accident processes. Attach a copy of your company's policies and procedure manual to the proposal. Also, include a five (5) year history of any accidents and safety violations

9. Additional Information and Comments

Include any other information that is believed to be pertinent, but not specifically asked for elsewhere in this RFP.

3.7.2 Cost Proposal

1. Each Proposer shall submit a cost proposal showing its proposed overall budget for three years with budget justification in narrative form. The proposed fees should reflect both the direct costs of service (such as driver staff hourly pay, and the fuel required for the trip) and indirect costs and earnings (including costs such as management staff, vehicles, maintenance, and insurance).
2. Provide certified financial statements for the last three fiscal years. If certified financial statements are not available, provide financial statements sworn to by the firm's Chief Financial Officer.

3.7.3 Proposer's Forms

Proposals should include all required forms in Section V Proposer's Forms. Failure to submit the required forms shall be a basis for rejection of your proposal.

3.7.4. Proposal Submission

Proposals shall be submitted with a cover letter in three parts:

Part 1 - Technical Proposal

Part 2 - Cost Proposal

Part 3 - Proposer's Forms

The proposal shall designate a single representative with whom the County shall communicate regarding the proposal and contract negotiations, if any.

An electronic copy, in either MS Word or Acrobat.pdf, and three (3) hard copies of the Technical Proposal and Cost Proposal shall be provided. One (1) original set and one (1) copy of all Proposer's Forms and Clearance Requests Forms, identified in Section 'V' of this RFP shall be provided. Each Part shall be separately packaged and sealed. The documents in each Part of the proposal (other than the forms) should contain the proposing firm's name or other identifying information in the header or footer.

Montgomery County recognizes that there may be elements of the technical information considered proprietary. The Proposer shall identify any specific information or design detail that is proprietary. Mark clearly and prominently each and every page or sheet of such materials with "PROPRIETARY" as it determines to be appropriate. Montgomery County will endeavor to protect such information and design details against unnecessary disclosure. Under no circumstances, however, will Montgomery County be responsible or liable to the Proposer or any other party for the disclosure of such labeled material.

All language in the Proposal shall be in English (U.S. terminology). All documents, conferences, letters, faxes and technical information shall be prepared, conducted, or offered solely in English. Dimensions on drawings must include U.S. units. It is not necessary to revise existing drawings to replace metric units with U.S. units. All critical data or text on drawings which will be relevant to the evaluation process must be translated into English. If a discrepancy exists between U.S. and metric units, the U.S. units shall govern.

The Technical Proposal package shall be clearly marked "TECHNICAL PROPOSAL – Montgomery County Management, Operation and Maintenance of the Public Transit System".

The Cost Proposal package shall be clearly marked "COST PROPOSAL – Montgomery County Management, Operation and Maintenance of the Public Transit System".

The package of Proposer's Forms shall be clearly marked "PROPOSER'S FORMS – Montgomery County Management, Operation and Maintenance of the Public Transit System".

Any color materials included with the proposal shall be easily photocopied and clearly readable in black and white. All language used in the proposal and any exhibits shall be English (U.S. terminology).

Montgomery County will not accept proposals by facsimile, e-mail or any other electronic means, except where specifically requested. The entire proposal shall be submitted in a sealed package and shall be clearly marked "**Proposal for Montgomery County Management, Operation and Maintenance of the Public Transit System.**"

The complete Proposal shall be submitted in accordance with the cover letter of this RFP.

3.8 Evaluation of Proposals

Overview

An Evaluation Committee will be appointed by Montgomery County to participate in the review and evaluation of all submitted proposals. Montgomery County evaluation team members may also make site visits to Proposer's facility. Proposals will first be reviewed on a pass/fail basis for responsiveness to the specifications and requirements of the RFP, including instructions governing submission and form. Any non-conforming or incomplete proposals will be disqualified unless Montgomery County determines, in its sole discretion, that non-compliance is not substantial or that an alternative proposed by the Proposer is acceptable.

3.9 Method of Award

1. The Montgomery County Evaluation Committee is charged with the responsibility of evaluating the received proposals. Each proposal will be ranked in sequence, from the highest to the lowest.
2. Montgomery County reserves the right, in its sole discretion, to accept the proposal or proposals most advantageous to Montgomery County without further discussion or negotiation, or to reject all or any of the proposals. Montgomery County reserves the right to negotiate on the entire proposal, as submitted, or at the sole discretion of the Montgomery County, to delete individual tasks deemed not in the County's best interest and negotiates on the remaining portions of the proposal.
3. Montgomery County reserves the right, in its sole discretion, to enter immediately into negotiations with any selected Proposer, or to enter into negotiations with multiple selected Proposers. The single selected Proposer may be provided with an opportunity to amend its proposal, and then submit a Best And Final Offer (BAFO). Once submitted, the Proposer may not withdraw or modify a BAFO, except as requested by Montgomery County. As appropriate, Montgomery County may review and amend the ranking of any Proposer that submits a BAFO.
4. A formal Notice of Intent to Award a Contract shall be sent to the successful Proposers, together with a contract for signature.
5. Following receipt by Montgomery County of the signed contract, and all other submittals, and completed forms required by this Request For Proposals, the negotiated contract, the recommendations of the Evaluation Committee, and other recommendations will be presented for contract approval by various County departments and the Montgomery County Legislature, and execution of the contract instrument by the Montgomery County Executive.
6. After execution of this instrument, a formal, dated, Notice to Proceed (NTP) will be issued to the Contractor.

3.10 Contract Amendments

The County may consider it in its best interest to change, modify or extend a covenant, term or condition of this Contract. Any such change, addition, deletion, extension or modification of Services may require that the compensation paid to the Contractor by the County be proportionately adjusted, either increased or decreased, to reflect such modification. If the County and the Contractor mutually agree to any changes or modification of this Contract, the modification shall be incorporated into this Contract by written Amendment.

Compensation shall not be modified unless there is a corresponding modification in the Services sufficient to justify such an adjustment. If there is any dispute as to compensation, the Contractor shall continue to perform the Services under this Contract until the dispute is resolved.

The term of the Contract shall be three (3) years after approval by the Montgomery County Board of Legislators. The Contract may be extended at the sole discretion of Montgomery County for up to two (2) additional one-year periods beyond the original term. Montgomery County will consider the additional one-year periods within the year in which the contract terminates and if an extension is acceptable, will notify the Contractor six months in advance.

All Amendments to this Contract will be reviewed and approved by NYSDOT on behalf of the FTA. No Amendment to this Contract shall be effective and binding upon the parties unless it expressly makes reference to this Contract, is in writing, is signed and acknowledged by duly authorized representatives of both parties, is approved by the appropriate County Departments, the Montgomery County Legislature, and is executed by the County Executive.

The County shall not be bound by Unauthorized Acts of its employees, agents, or representatives with regard to any dealings with the Contractor and any of its Associates.

3.11 Contract Close-out and Final Payment

At the end of the contract term, Montgomery County will notify Contractor of the Contract Close-Out date. No additional Services are to be scheduled after notification.

Final Payment may be made to the Contractor upon receipt of a properly completed final invoice, the return of all leased vehicles, and receipt of any outstanding documentation that may be required under the contract.

SECTION IV

Transportation Providers Application

TRANSPORTATION PROVIDERS APPLICATION

CHECKLIST

Please return this sheet with all documents below in the correct sequence:

_____ **Face Page:** Complete all contractor information.

_____ **Contractor Signature Page:** Complete with person(s) authority to bind your firm.

Technical Proposal

_____ **Attachment A:** Description of Applicants Organization

_____ **Attachment B:** Relevant Experience

_____ **Attachment C:** Organizational Structure/Personnel

_____ **Attachment D:** Description of Facilities

_____ **Attachment E:** Description of Maintenance Program

_____ **Attachment F:** Description of Driver's Hiring Criteria/Proposed Training

_____ **Attachment G:** Services Proposal

_____ **Attachment H:** Safety Record and Accident History

Costs Proposal

_____ **Attachment A:** Budget and Justification

_____ **Attachment B:** Financial Statements

Proposer's Forms

_____ **Attachment(s):** Proposer's Forms, Section V, Forms A-I

COVER PAGE

Company Name _____

Primary Mailing Address _____

Contact Person/Title _____

Contact Phone/Email _____

Total years providing transportation service _____

Current primary area(s) of service _____

CERTIFICATIONS, CLEARANCES & REQUIREMENTS

By selecting the options that apply for the following items, you attest that your agency currently has the following certifications

Conducts a Federal Drug/Alcohol Testing Program	() Yes	() No	() In process
Disadvantaged Business Enterprise (DBE)	() Yes	() No	() In process
NYS Operating Authority	() Yes	() No	() In process

SIGNATORY PAGE

I, the undersigned, hereby offer to provide professional services for Management, Operation and Maintenance of the Public Transportation System in Montgomery County in accordance with your Request for Proposal dated August 30, 2019 and our Proposal. We are hereby submitting our Proposal, which includes the Technical Proposal and Financial Proposal sealed under a separate envelope.

I hereby declare that all the information and statements made in this Proposal are true and we accept that any misrepresentation contained in it may lead to our disqualification;

I confirm that I have read, understood and hereby accept the General Conditions, Special Conditions, and Specific Requirements describing the duties and responsibilities required of us in this RFP.

I fully understand and recognize that Montgomery County is not bound to accept this proposal, that we shall bear all costs associated with its preparation and submission, and that Montgomery County will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the evaluation.

Authorized Signature [*In full and initials*]: _____

Name and Title of Signatory: _____

Name of Company: _____

Contact Details: _____

Notary Public
Printed Name: _____
My Commission Expires: _____

TECHNICAL PROPOSAL**Tab 1 – Attachment A: DESCRIPTION OF APPLICANT’S ORGANIZATION**

Provide a brief synopsis of the organization including when and where incorporated, major business activities, prior business activities, corporate structure (corporation, sole proprietorship, public agency, etc.), financial information and corporate officers of the organization/firm.

Tab 2 – Attachment B: RELEVANT EXPERIENCE

Fully describe your company’s relevant experience and responsibilities to the objectives and tasks outlined in this RFP. Please include the following information:

1. Describe the firm’s experience providing transportation services; including the time the firm has been in the transportation business, the types of service provided, and other pertinent information that will help Montgomery County understand your firms’ capability to provide the required Services; specifically noting rural deviated fixed route service and if applicable, coordination with other systems.
2. Describe the firm’s experience providing Services under federal or state programs.
3. Describe your customer satisfaction record. This may include both individuals and government entities for which you have provided Services.
4. Provide the names and telephone numbers of three (3) references from organizations that will confirm your proven ability to perform the Scope of Services outlined in this RFP.

Tab 3 – Attachment C: ORGANIZATIONAL STRUCTURE/PERSONNEL

Fully describe the organizational structure of your company, providing an organization chart reflecting the relationship of staff assigned to this project to the overall company structure. Describe (in specific terms) the level of corporate responsibilities and duties that will be provided to support the operation in Montgomery County. Indicate experience and responsibilities of all personnel to be assigned to provide the Services required under this contract. Provide resumes and any other information detailing the experience and qualifications of all management personnel to be assigned to this project. Include the anticipated staff you agency anticipates will commit to perform the services:

ANTICIPATED STAFF			
For each of the following staffing categories list the total number of individuals your agency anticipates will commit to perform the services. of each categories total, further identify the total number of full- and/or part-time participants			
STAFF CATEGORY	QUANTITY	#OF FULL-TIME	#OF PART TIME
MANAGEMENT			
DRIVERS			
MAINTENANCE			
ROAD SUPERVISION			
SCHEDULERS/ DISPATCH			
OTHER: PLEASE DESCRIBE			

Tab 4 - Attachment D: DESCRIPTION OF FACILITIES

Describe the facilities you will use to manage and provide transportation services in Montgomery County. Describe any equipment and/or software programs you use that you believe will enhance your ability to provide the required Services.

Tab 5 - Attachment E: DESCRIPTION OF MAINTENANCE PROGRAM

The successful proposer shall be responsible for all maintenance, regardless of whether vehicles are owned by the contractor or by Montgomery County. To ensure reliable services are provided to the citizens of the County, describe in full detail, the proposed preventive maintenance program (including vehicle cleanliness), indicating intervals between service maintenance, events performed at each service, etc. Describe how routine maintenance will be performed on site. Also, describe proposed actions in event of unforeseen breakdowns while vehicle is in revenue service. Proposer is to include their NYSDOT profile for the past three years.

Tab 6 – Attachment F: DESCRIPTION OF DRIVER’S HIRING CRITERIA/TRAINING

Fully describe the proposed procedures for recruitment, screening, selection, and training of drivers. Proposers should note the provisions within this RFP, which indicate that a mandatory program of alcohol and drug testing as prescribed by the Federal Transit Administration must be maintained by the proposer.

Tab 7 - Attachment G: SERVICES PROPOSAL

Provide a detailed description of your technical plan for fulfilling the required objectives and tasks as outlined in this RFP. Include the following in this description:

1. A statement of understanding of Montgomery County’s goals and the service requirements to which this RFP is addressed.
2. A work plan for providing each function necessary to deliver the required Services. Specific functions to be described include your firm’s approach to overall management, confidential information management, marketing, dispatching, scheduling, road supervision, and maintenance management. Other elements of the approaches and methods your firm uses to provide transportation services that you believe will enhance your ability to provide the Services required under this contract should also be described.
3. A description of your firm’s approach to customer service.
4. A description of your firm’s approach to safety as it applies to vehicle management, and driver training and management.
5. A description of your firm’s performance monitoring and quality control.
6. Your expected interface with Montgomery County staff.
7. Any anticipated problems with the work required under this RFP, and your proposed alternative solutions.

Tab 8 - Attachment H: SAFETY RECORD AND ACCIDENT HISTORY

Fully describe your company’s safety and accident processes. Attach a copy of your company’s policies and procedure manual to the proposal. Also, include a five (5) year history of any accidents and safety violations.

Additional Information and Comments

Include any other information that is believed to be pertinent, but not specifically asked for elsewhere in this RFP.

COST PROPOSAL

Tab 1 - Attachment A: **BUDGET AND JUSTIFICATION**

Complete the three year project annual budget using the chart below and include a narrative justification for each line item.

	Year 1 2019	Year 2 2020	Year 3 2021
Transit Management Salaries & Wages			
Operating Personnel Salaries & Wages			
Vehicle Maintenance Salaries & Wages			
Fringe Benefits			
Fuel and Lubricants			
Parts and Repairs			
Other Materials and Supplies			
Transit Utilities and Leases			
Vehicle and other Insurance			
Marketing, Advertising and Printing			
Audit Fee			
Other Operating Expenses (taxes, Phone, electric, heat, admin, supplies, etc.)			
Profit			
Total Budget			
Total Project Budget			

Tab 2 – Attachment B: **FINANCIAL STATEMENTS**

Provide certified financial statements for the last three fiscal years. If certified financial statements are not available, provide financial statements sworn to by the firm's Chief Financial Officer.

PROPOSER'S FORMS

Tab 1 – Attachment A: **PROPOSER'S FORM, SECTION V, FORMS A-I**

Proposals should include all required forms in Section V Proposer's Forms. Failure to submit the required forms shall be a basis for rejection of your proposal.

SECTION V

Proposer Forms & Clearance Requests

SECTION V – PROPOSER’S FORMS

Any contract/purchase order resulting from this solicitation shall include the forms indicated below. **Proposers/Bidders shall complete the required forms and return them, along with the checklist, with the signed bid/proposal document. Failure to submit the required forms shall be a basis for rejection of your bid/proposal.**

FORM A	Acknowledgment of Receipt of Addenda
FORM B	Certification of Compliance with Federal Affirmative Action Requirements
FORM C	Certification of Compliance with Drug and Alcohol Policy and Testing Program
FORM D	Certificate Regarding Ineligible Contractors
FORM E	Equal Employment Opportunity <ul style="list-style-type: none">- Affirmative Action Policy Statement- Employment Practice Report- Covenant of Equal Opportunity
FORM F	Debarment and Suspensions (Non-Procurement) <ul style="list-style-type: none">- Certification of Primary Participant Regarding Debarment, Suspension and Other Responsibility Matters- Certificate of Lower-Tier Participants
FORM G	Certification Regarding Lobbying
FORM H	Non-Collusion Bidding Certification

FORM A

Project Title: _____

ACKNOWLEDGMENT OF RECEIPT OF ADDENDA

The undersigned acknowledges receipt of the following addenda to the request for proposals (RFP) document:

Addenda No. _____, dated _____

Addenda No. _____, dated _____

Addenda No. _____, dated _____

(Add lines as needed for additional addenda)

Date: _____

Company Name: _____

Signature: _____

Name: _____ (Print)

Title: _____

**CERTIFICATION OF COMPLIANCE WITH
FEDERAL AFFIRMATIVE ACTION REQUIREMENTS**

Applicability – Code of Federal Regulations, Part 60

False or fictitious representation of compliance will result in federal sanctions and/or sanctions by MONTGOMERY COUNTY.

The Corporation, _____, (Complete Legal Name), states:

1. That the company is **or** is not (circle one) owned or controlled by a parent company, which owns fifty-one percent (51%) or more of the voting rights and/or assets of the proposer; and that (if there is a parent company) the complete legal name, main office address, and state of incorporation of said parent company is as follows:

2. If the proposer is a Corporation, it is **or** is not (**circle one**) a New York Corporation and if not, which State are you registered as a Corporation:

3. That it, its agents, officers, and employees have not directly or indirectly entered into any agreements, participated in any collusion, or otherwise taken any action in restraint of free, competitive bidding in connection with this bid;
4. That it is aware that the work specified herein is to be performed in accordance with the Affirmative Action Requirements of these contract documents, and that all of its subcontractors are aware of said requirements and also agree to comply with them;

5. The bidder/Proposer/Contractor and its first tier sub-contractors must meet the requirements contained herein provided it:
- a. Has 50 or more employees; **and**
 - b. Has a contract of \$50,000 or more, or
 - c. Has contracts which total \$50,000 or more; or
 - d. Which may reasonably be expected to total \$50,000 or more, in any 12 month period; or
 - e. Is a financial institution which serves as a depository for Government funds in any amount, acts as an issuing or redeeming agent in U.S. savings bonds and notes in any amount, or subscribes to federal deposit or share insurance.
- Yes_____ No _____

Requirements: Check Yes, No or Not Applicable

- A. Standard Form 100 (EEO-1) is filed annually on or before the 31st day of March with the Joint Reporting Committee, the U.S. Office of Federal Contract Compliance or with the U.S. Equal Employment Opportunity commission.
- Yes_____No_____Not Applicable_____
- B. The Contractor/Sub-contractor has participated in previous contracts or subcontracts subject to the general obligations of Executive Order 11246, for government contractors and subcontractors contained in Code of Federal Regulations, Part 60.
- Yes_____No_____Not Applicable _____
- C. The Contractor/Sub-contractor has participated in previous contracts or subcontracts subject to the general obligations of Executive Order 11246, for government contractors and subcontractors contained in 41 Code of Federal Regulations, Part 60.
- Yes_____No_____Not Applicable _____

(Signature of Authorized Representative)

(Title)

Name of DBE/WBE Liaison: _____ Phone _____

Name of DBE/WBE Liaison: _____ Phone _____

I, _____, Secretary for _____
the corporation, attest to the authority of _____
_____ to execute this bid proposal in behalf of the
bidder and the parent company if other than the bidder.

Secretary

FORM C

**CERTIFICATION OF COMPLIANCE WITH
DRUG AND ALCOHOL POLICY AND TESTING PROGRAM**

I, _____ (Name of Official)

_____ (Title of Official)

_____ (Name of Company/Municipality)

DO HEREBY CERTIFY that an anti-drug and alcohol misuse prevention program has been established in accordance with the terms of the Code of Federal Regulations, Title 49, Part 40, Part 655 (A federal regulations@).

I further certify that the program specifically provides provisions for:

1. Training for safety-sensitive employees and training for supervisors in accordance with the federal regulations.
2. Testing of safety-sensitive employees for drugs and alcohol in accordance with the approved testing protocols and procedures set forth in the federal regulations under the following circumstances:
 - Pre-employment
 - Post-Accident
 - Return to Duty
 - Blind Performance Testing
 - Reasonable Suspicion
 - Random
 - Follow Up
3. Use of a Medical Review Officer (MRO) for all drug tests and a Substance Abuse Professional (SAP) for evaluations and follow-up treatment and testing recommendations for all individuals who test positive under any drug and alcohol test, as these requirements are set forth in the federal regulations.
4. Maintenance of records in accordance with the federal regulations which records will be made available upon request to Montgomery County/Department of Transportation or its designee.

Name (Print)

Title

Signature

Date

FORM D

CERTIFICATE REGARDING INELIGIBLE CONTRACTORS

_____ (Name of Corporation) certifies that it is NOT included in the U.S. General Services Administration's System for Award Management list of Persons or Firms Currently Debarred for Violations of Various Public Contracts Incorporating Labor Standards Provisions, and that it is NOT included on the New York Bureau of Labor and Industries' List of Contractors Ineligible to Receive Public Works Contracts.

Date: _____

Authorized Signature: _____

Name: _____
(print)

Title: _____

**EQUAL EMPLOYMENT OPPORTUNITY
AFFIRMATIVE ACTION POLICY STATEMENT**

The _____ (Name of Company) will not discriminate against any employee or applicant for employment because of race, creed, color, sex, or nation origin.

The _____ (Name of Company) will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship.

The _____ (Name of Company) will, in all solicitation or advertisements for employees placed by or behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, or national origin.

The _____ (Name of Company) will send to each labor union or representative of workers with which we have a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of the commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice conspicuous places available to employees and applicants for employment.

The _____ (Name of Company) will comply with all provisions of Executive Order 11246.

11375), Title VI of the Civil Rights Act of 1964 (as amended by the Equal Employment Opportunity Act of 1972), and all state and local laws, rules, and regulations issued pursuant thereto.

Authorized Representative: _____

Name of Company: _____

Date: _____

**EQUAL EMPLOYMENT OPPORTUNITY
EMPLOYMENT PRACTICE REPORT**

Contractor _____ Date _____

Address _____ Phone _____

County _____ State _____ Zip Code _____

Job _____

Is it the company's policy to recruit, hire, train, upgrade, promote, and decline persons without regard to race, color, religion, sex, national origin or ancestry?	YES	NO
Has responsibility been assigned to develop procedures which will assure that this policy is understood and carried out by managerial, administrative and supervisory personnel?		
If "YES", please indicate the name of the official with this responsibility Name _____ Title _____ Phone _____		
Has the company developed a written Affirmative Action Program? If "Yes", please forward a copy with this form.		
Have all recruitment sources been notified that the company will consider all qualified applicants without regard to race, color, religion, sex national origin or ancestry?		
If advertising is used, does it specify that all qualified applicant will be considered for employment without regard to race, color, religion, sex national origin or ancestry?		
Does the company have bargaining agreements with employee organizations? "Yes", have such organizations been notified of the company's responsibility to comply with the Equal Employment Opportunity Clauses and non-discrimination clause as it applies to apprentices and other employees?		
Has the company notified all of its subcontractors of their obligation to comply with the non-discrimination clause?		
Identify Employee Organizations: (Local Union Number) _____ (International) _____		

**EQUAL EMPLOYMENT OPPORTUNITY
COVENANT OF EQUAL OPPORTUNITY
(Application for Clearance – Terms Enforced after Contract is Awarded)**

I, being duly authorized representative of the, (hereinafter “Contractor”), do hereby enter into a Covenant of Equal Opportunity (hereinafter “Covenant”) with Montgomery County, (“hereinafter” County); obligating the Contractor and all sub-contractors not to discriminate against any employee or applicant for employment, training, education, or apprenticeship connected directly or indirectly with the performance of the contract, with respect to his or her hire, promotion, job assignment, tenure, terms, conditions or privileges of employment because of race, color, religious beliefs, public benefit status, national origin, age, marital status, disability, sex, sexual orientation, or gender identity or expression.

I understand that it is my responsibility to ensure that all potential sub-contractors are reported to Montgomery County and have a current ***Contract Specific*** Clearance on file prior to working on any Montgomery County contract. I further understand that Montgomery County reserves the rights to require additional information prior to, during, and at any time after the Clearance is issued.

Furthermore, I understand that this covenant is valid for the life of the contract and that a breach of this covenant shall be deemed a material breach of the contract and subject to damages in accordance with Montgomery County.

Contractor _____

Signature of Authorized Official _____

Name/Title of Contractor’s Authorized Official _____

Date _____

FORM F

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, Debarment and Suspension, Executive Order 12689, Debarment and Suspension, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220 (b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

FORM F
Enclosure 1 of 2

**CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT,
SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

Proposer's Name _____
certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. If you are unable to certify to any of the statements in this certification, attach an explanation to this certification.

The certification in this clause is a material representation of fact relied upon by the recipient. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the recipient, 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.

Contractor _____

Signature of Authorized Official _____

Name/Title of Contractor's Authorized Official _

Date _____

CERTIFICATION OF LOWER-TIER PARTICIPANTS REGARDING
DEBARMENT, SUSPENSION AND OTHER INELIGIBILITY AND
VOLUNTARY EXCLUSION

The Lower Tier Participant (potential subcontractor under a major third party contract), _____, certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(If the Lower Tier Participant (potential subcontractor under a major third party contract) is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this proposal).

THE LOWER-TIER PARTICIPANT (POTENTIAL SUBCONTRACTOR UNDER A THIRD PARTY CONTRACT)_____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Signature and Title of Authorized Official_____

The undersigned chief legal counsel for the_____hereby certifies that the_____has authority under State and Local law to comply with the subject assurances and that the certification above has been legally made.

Signature of Applicant's Attorney_____

Date_____

FORM G
Introduction

DISCLOSURE OF LOBBYING ACTIVITIES

Section 319 of the Fiscal Year 1990 Department of the Interior and Related Agencies Appropriation Act. Public Law 101-121 contains a prohibition on the use appropriated funds for "influencing or attempting to influence" federal officials in connection with grants, cooperative agreements or contracts.

The law became effective December 23, 1989 and requires that all FTA grantees and contractors, in order to remain eligible for federal funds, must certify that no federal funds are used to influence federal employees, Members of Congress and Congressional staff regarding specific grants and contracts. The law also requires that contractors who use non-federal funds for lobbying on behalf of specific projects and proposals submit disclosure documentation when these efforts are intended to influence the decision of federal officials. These provisions apply to grants, contracts and cooperative agreements of \$100,000 or more.

The attached Form H "Certificate and Restrictions on Lobbying" must be completed and submitted to MONTGOMERY COUNTY in order for the bidder to be considered eligible for a contract award.

FORM G

CERTIFICATION AND RESTRICTIONS ON LOBBYING

I, _____ (Name and title of official), hereby certify on behalf of
_____ (Name of Company that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub- grants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

Signature of Contractor’s Authorized Official _

Name and Title of Contractor’s Authorized Official _

Date _____

FORM H

NON-COLLUSION BIDDING CERTIFICATION

(Section 2604, Public Authorities Law)

STATE OF NEW YORK)
) SS.:
COUNTY OF)

Before me personally appeared the undersigned, _____ who, on oath, says that (s)he is the _____ of _____ who submitted to **Montgomery County** (or any of its subsidiaries) a bid offer to do the work as set up in the Detailed Specifications herein, under agreement proposal number and description cited above.

By submission of this bid, the bidder, and each person signing on behalf of any bidder, certifies (and in the case of a joint bid, each party thereto certifies as to his/her own organization) under penalty of perjury and to the best of his/her knowledge and belief, that:

1. Prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not knowingly been disclosed by the bidder, and were not knowingly disclosed by the bidder prior to the opening, directly or indirectly, to any bidder or to any competitor; and
3. No attempt was made by the bidder to induce any other person, partnership or corporation to submit or not submit a bid for the purpose of restricting competition; and
4. That no official of Montgomery County (or any of its subsidiaries) or any person in the employ of the Authority is directly or indirectly interested in said bid or in the supplies or work to which it relates, or in any portion of the profits thereof.

(Name of Bidder Corporation, Firm, etc.)

By: _____
(Signature)

(Print Name)

Sworn to before me this _____ day of _____, 20 _____

Notary Public, State of _____

FORM I

SEXUAL HARASSMENT PREVENTION POLICY AND TRAINING CERTIFICATION

Firm Name _____

Business Address _____

Telephone Number _____ Date of Bid _____

Certification

The bidder certifies under the penalty of perjury that the bidder has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment training to all of its employees in compliance with Department of Labor regulations.

Signature (Authorized) _____

Title _____

SECTION V

Sample Contract

SERVICES CONTRACT BETWEEN

MONTGOMERY COUNTY, NY

AND

CONTRACT NO.

CONTRACT PROVISIONS

Article 1.	Definitions.....	CP-3
Article 2.	Engagement of Contractor.....	CP-5
Article 3.	Contractor's Representations and Warranties	CP-6
Article 4.	Contract Effective Date and Time of Performance.....	CP-7
Article 5.	Data to Be Furnished Contractor	CP-7
Article 6	Contractor Personnel and Contract Administration.....	CP-7
Article 7.	Compensation.....	CP-8
Article 8.	Maintenance and Audit of Records	CP-9
Article 9.	Indemnity.....	CP-10
Article 10.	Insurance	CP-11
Article 11.	Default and Termination.....	CP-14
Article 12.	Assignment.....	CP-17
Article 13.	Subcontracting.....	CP-17
Article 14.	Conflict of Interest.....	CP-18
Article 15.	Confidential Information.....	CP-18
Article 16.	Compliance with Laws	CP-19
Article 17.	Amendments.....	CP-19
Article 18.	Fair Employment Practices.....	CP-19
Article 19.	Notices.....	CP-20
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*Section VII and Section VIII of this RFP will be required in the final contract

MONTGOMERY COUNTY PROFESSIONAL SERVICES CONTRACT

This **Professional Services Contract** ("Contract") is entered into by and between Montgomery County, a New York State municipal corporation, acting by and through the Montgomery County Legislature ("County"), and (name of contractor) with its principal place of business located at (Contractor's address).

Recitals:

Whereas, the County desires to engage the Contractor to render certain technical or professional services ("Services") as set forth in this Contract; and

Whereas, the Contractor desires to perform the Services as set forth in this Contract; and accordingly, the parties agree as follows:

Article 1. Definitions

The following words and expressions or pronouns used in their stead shall be construed as follows:

"Additional Services" shall mean any services in addition to the services set forth in Exhibit A that are related to fulfilling the objectives of this Contract and are agreed upon by the parties by written Amendment.

"Amendment" shall mean modifications or changes in this Contract that have been mutually agreed upon by the County and the Contractor in writing and approved by the County Legislature.

"Associates" shall mean the personnel, employees, consultants, subcontractors, agents, and parent company of the Contractor or of any Subcontractor, now existing or subsequently created, and their agents and employees, and any entities associated, affiliated, or subsidiary to the Contractor or to any subcontractor, now existing or subsequently created, and their agents and employees.

"County" shall mean Montgomery County, a municipal corporation, acting through the office or department named in the Contract as contracting for the Services on behalf of the County.

"County Legislature" shall mean the legislative body of Montgomery County.

"Contract" shall mean each of the various provisions and parts of this document, including the RFP and Contractor's proposal, attached Exhibits and all Amendments, and Federal and State clauses as executed and approved by the appropriate County departments or offices and by the County Legislature.

"Contractor" shall mean the party that contracts with the County by way of this Contract, whether an individual, sole proprietorship, partnership, corporation, or other form of business organization, and its heirs, successors, personnel, agents, employees, representatives, executors, administrators and assigns.

"Exhibit A" is the Scope of Services for this Contract and sets forth all pertinent data relating to performance of the Services.

"Exhibit B" is the Fee Schedule for this Contract and sets forth the amount of compensation to be paid to the Contractor, including any Reimbursable Expenses, and any applicable hourly rate information.

"Records" shall mean all books, ledgers, journals, accounts, documents, and other collected data in which information is kept regarding the performance of this Contract.

"Reimbursable Expenses" shall mean only those costs incurred by the Contractor in the performance of the Services, such as travel costs and document reproduction costs that are identified in Exhibit B as reimbursable.

"Services" shall mean all work that is expressly set forth in Exhibit A, the Scope of Services, and all work expressly or impliedly required to be performed by the Contractor in order to achieve the objectives of this Contract.

"Subcontractor" shall mean any person, firm or corporation, other than employees of the Contractor, that contract's with the Contractor, directly or indirectly, to perform in part or assist the Contractor in achieving the objectives of this Contract.

"Technology" shall mean any and all computer-related components and systems, including but not limited to computer software, computer code, computer programs, computer hardware, embedded integrated circuits, computer memory and data storage systems, whether in the form of read-only memory chips, random access memory chips, CD-ROMs, floppy disks, magnetic tape, or some other form, and the data retained or stored in said computer memory and data storage systems.

"Unauthorized Acts" shall mean any acts by a Contractor/County employee, agent or representative that are not set forth in this Contract and have not been approved by Board of Legislators as part of this Contract.

"Work Product" shall mean the originals, or copies when originals are unavailable, of all materials prepared by the Contractor under this Contract or in anticipation of this Contract, including but not limited to Technology, data, studies, briefs, drawings, maps, models, photographs, files, records, computer printouts, estimates, memoranda, computations, papers, supplies, notes, recordings, and videotapes, whether such materials are reduced to writing, magnetically or optically stored, or kept in some other form.

Article 2.

Engagement of Contractor

By this Contract, the County engages the Contractor and the Contractor hereby agrees to faithfully and diligently perform the Services set forth in Exhibit A, in accordance with the terms and conditions contained in this Contract.

The Contractor shall perform in a satisfactory manner as shall be determined within the sole and reasonable discretion of the County. In the event that there shall be any dispute between the parties with regard to the extent, character and progress of the Services to be performed or the quality of performance under this Contract, the interpretation and determination of the County shall govern.

The Contractor shall confer as necessary and cooperate with the County in order that the Services may proceed in an efficient and satisfactory manner. The Services are deemed to include all conferences, consultations and public hearings or appearances deemed necessary by the County to ensure that the Contractor will be able to properly and fully perform the objectives as set forth in this Contract.

All Services are subject to review and approval of the County for completeness and fulfillment of the requirements of this Contract. Neither the County's review, approval nor payment for any of the Services shall be construed to operate as a waiver of any rights under this Contract, and the Contractor shall be and will remain liable in accordance with applicable law for all damages to the County caused by the Contractor's negligent performance or nonperformance of any of the Services furnished under this Contract.

The Services shall be performed as set forth in Exhibit A, or at such other locations as are deemed appropriate by the County and the Contractor for the proper performance of the Services.

The County and the Contractor expressly acknowledge their mutual understanding and agreement that there are no third party beneficiaries to this Contract and that this Contract shall not be construed to benefit any persons other than the County and the Contractor.

It is understood that this Contract is not an exclusive services contract, that during the term of this Contract the County may contract with other firms, and that the Contractor is free to render the same or similar services to other clients, provided the rendering of such services does not affect the Contractor's obligations to the County in any way.

Article 3.
Contractor's Representations and Warranties

To induce the County to enter into this Contract, the Contractor represents and warrants that the Contractor is authorized to do business under the laws of the State of New York and is duly qualified to perform the Services as set forth in this Contract, and that the execution of this Contract is within the Contractor's authorized powers and is not in contravention of federal, state or local law.

The Contractor makes the following representations and warranties as to any Technology it may provide under this Contract:

3.01

- (a) That all Technology provided to the County under this Contract shall perform according to the specifications and representations set forth in Exhibit A and according to any other specifications and representations, including any manuals, provided by the Contractor to the County;
- (b) That the Contractor shall correct all errors in the Technology provided under this Contract so that such technology will perform according to Contractor's published specifications;
- (c) That the Contractor has the full right and power to grant the County a license to use the Technology provided pursuant to this Contract;
- (d) That any Technology provided by Contractor under this Contract is free of any software, programs or routines, commonly known as "disabling code," that are designed to cause such Technology to be destroyed, damaged, or otherwise made inoperable in the course of the use of the Technology;
- (e) That any Technology containing computer code and provided under this Contract is free of any known or reasonably discoverable computer program, code or set of instructions, commonly known as a "computer virus," that is not designed to be a part of the Work Product and that, when inserted into the computer's memory: (i) duplicates all or part of itself without specific user instructions to do so, or (ii) erases, 5alters or renders unusable any Technology with or without specific user instructions to do so, or (iii) that provide unauthorized access to the Technology; and
- (f) That all Technology shall be delivered new and in original manufacturer's packaging and shall be fully warranted for repair or replacement during the term of this Contract as amended or extended.
- (g) That any Technology that it is provided to the County shall:
 - (1) Accurately recognize and process all time and date data including, but not limited to, daylight savings time and leap year data, and
 - (2) Use accurate same-century, multi-century, and similar date value

formulas in its calculations, and use date data interface values that accurately reflect the correct time, date and century.

Article 4.
Contract Effective Date and Time of Performance

This Contract shall be approved by the required County departments, approved by the County Legislature, and signed by the County Executive. The effective date of this Contract shall be the date upon which the Contract has been authorized by resolution of the Board of Legislators. The term of this Contract shall terminate on December 31, 2021.

Prior to the approvals set forth in Section 4.01, the Contractor shall have no authority to begin work on this Contract. The Finance Director shall not authorize any payments to the Contractor, nor shall the County incur any liability to pay for any services rendered or to reimburse the Contractor for any expenditure, prior to such award and approvals.

The County and the Contractor agree that the commencement and duration of the Contractor's performance under this Contract shall be determined as set forth in Exhibit A.

Article 5.
Data to Be Furnished Contractor

Copies of all information, reports, records, and data as are existing, available, and deemed necessary by the County for the performance of the Services shall be furnished to contractor upon the Contractor's request. With the prior approval of the County, the Contractor will be permitted access to County offices during regular business hours to obtain any necessary data. In addition, the Contractor will schedule appropriate conferences at convenient times with administrative personnel of the County for the purpose of gathering such data.

Article 6.
Contractor Personnel and Contract Administration

The Contractor represents that, at its own expense, it has obtained or will obtain all personnel and equipment required to perform the Services. It warrants that all such personnel are qualified and possess the requisite licenses or other such legal qualifications to perform the services assigned. If requested, the Contractor shall supply a résumé of the managerial staff or consultants it proposes to assign to this Contract, as well as a dossier on the Contractor's professional activities and major undertakings.

The County may interview the Contractor's managerial staff and other employees assigned to this Contract. The Contractor shall not use any managerial staff or other employees to whom the County objects and shall replace in an expedient manner those rejected by the County. The Contractor shall not replace any of the personnel working on this Contract with new personnel without the prior written consent of the County.

When the County deems it reasonable to do so, it may assign qualified County employees or its designees to work with the Contractor to complete the Services. Nevertheless, it is expressly understood and agreed by the parties that the Contractor shall remain ultimately responsible for the proper completion of the Services.

The relationship of the Contractor to the County is and shall continue to be that of an independent contractor and no liability or benefits, such as workers' compensation, pension rights or liabilities, insurance rights or liabilities, or other rights or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to either party or either party's agent, Subcontractor or employee as a result of the performance of this Contract. No relationship other than that of independent contractor shall be implied between the parties or between either party's agents, employees or Subcontractors. The Contractor agrees to indemnify, defend, and hold the County harmless against any claim based in whole or in part on an allegation that the Contractor or any of its Associates qualify as employees of the County, and any related costs or expenses, including but not limited to legal fees and defense costs.

The Contractor warrants and represents that all persons assigned to the performance of this Contract shall be regular employees or independent contractors of the Contractor, unless otherwise authorized by the County. The Contractor's employees' daily working hours shall be determined by the Contractor in accordance with contracted Services.

The Contractor shall comply with and shall require its Associates to comply with all security regulations and procedures in effect on the County's premises.

Article 7. Compensation

Compensation for Services provided shall not exceed the amount of _____ Thousand and 00/100 Dollars (_____.____), inclusive of expenses, and will be paid in the manner set forth in Exhibit B. Unless this Contract is amended pursuant to Article 17, this amount shall be the entire compensation to which the Contractor is entitled for the performance of Services under this Contract.

The County employee or designee responsible for accepting performance under this Contract is:

(Name)

(Title)

(Address)

Fonda, New York 12068

Telephone: (518) _____

Facsimile: (518) _____

The County employee from whom payment should be requested is:

(Name)

(Title)

(Address)

Fonda, New York 12068

Telephone: (518) _____

Facsimile: (518) _____

Article 8.

Maintenance and Audit of Records

The Contractor shall maintain full and complete Records reflecting all of its operations related to this Contract. The Records shall be kept in accordance with generally accepted accounting principles and maintained for a minimum of eight (8) years after the Contract completion date.

The County and any government-grantor agency providing funding under this Contract shall have the right at any time without notice to examine and audit all Records and other supporting data of the Contractor as the County or any agency deems necessary.

- (a) The Contractor shall make all Records available for examination during normal business hours at its Montgomery County offices, if any, or alternatively at its facility nearest Montgomery County. The County and any government-grantor agency providing funds for the Contract shall have this right of inspection. The Contractor shall provide copies of all Records to the County or to any such government-grantor agency upon request.
- (b) If in the course of such inspection the representative of the County or of another government-grantor agency should note any deficiencies in the performance of the Contractor's agreed upon performance or record-keeping practices, such deficiencies will be reported to the Contractor in writing. The Contractor agrees to promptly remedy and correct any such reported deficiencies within ten (10) days of notification.
- (c) Any costs disallowed as a result of an audit of the Records shall be repaid to the County by the Contractor within thirty (30) days of notification or may be set off by the County against any funds due and owing the Contractor, provided, however, that the Contractor shall remain liable for any disallowed costs exceeding the amount of the setoff.
- (d) Each party shall pay its own audit costs.

- (e) Nothing contained in this Contract shall be construed or permitted to operate as any restriction upon the powers granted to the Auditor General by the County Charter, including but not limited to the powers to audit all accounts chargeable against the County and to settle disputed claims.

The Contractor agrees to include the covenants contained in this article in any contract it has with any Subcontractor, consultant or agent whose services will be charged directly or indirectly to the County for Services performed pursuant to this Contract.

Article 9. Indemnity

The Contractor agrees to indemnify, defend, and hold the County harmless against and from any and all liabilities, obligations, damages, penalties, claims, costs, charges, losses and expenses (including, without limitation, fees and expenses for attorneys, expert witnesses and other consultants) that may be imposed upon, incurred by, or asserted against the County or its departments, officers, employees, or agents by reason of any of the following occurring during the term of this Contract:

- (a) Any negligent or tortious act, error, or omission attributable in whole or in part to the Contractor or any of its Associates; and
- (b) Any failure by the Contractor or any of its Associates to perform their obligations, either express or implied, under this Contract; and
- (c) Any and all injury to the person or property where such injury arises out of the Contractor's or any of its Associates performance of this Contract.

The Contractor shall examine all places where it will perform the Services in order to determine whether such places are safe for the performance of the Services. The Contractor undertakes and assumes all risk of dangerous conditions when not performing Services inside County offices. The Contractor also agrees to waive and release any claim or liability against the County for personal injury or property damage sustained by it or its Associates while performing under this Contract on premises that are not owned by the County.

In the event any action shall be brought against the County by reason of any claim covered under this Article 9, the Contractor, upon notice from the County, shall at its sole cost and expense defend the same.

The Contractor agrees that it is the Contractor's responsibility and not the responsibility of the County to safeguard the property that the Contractor or its Associates use while performing this Contract. Further, the Contractor agrees to hold the County harmless for any loss of such property used by any such person pursuant to the Contractor's performance under this Contract.

The indemnification obligation under this Article 9 shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable under workers' compensation acts or other employee benefit acts.

The Contractor agrees that this Article 9 shall apply to all claims, whether litigated or not, that may occur or arise between the Contractor or its Associates and the County and agrees to indemnify, defend and hold the County harmless against any such claims.

Article 10. Insurance

During the term of this Contract, the Contractor shall maintain the following insurance, at a minimum and at its expense:

<u>TYPE</u>	<u>AMOUNT NOT LESS THAN</u>
(a) Workers' Compensation	New York State Statutory minimum
(b) Employers' Liability	\$500,000.00 minimum each disease \$500,000.00 minimum each person \$500,000.00 minimum each accident
(c) Commercial General Liability occurrence Insurance (Broad Form Comprehensive)	\$1,000,000.00 each \$2,000,000.00 aggregate
(d) For automobiles that are not used as transport vehicles under this Contract: Automobile Liability Insurance (covering all owned, hired and damage personal and property Protection insurance, including residual liability insurance under New York no fault insurance law)	 \$1,000,000.00 combined single limit for bodily injury and property
(e) For vehicles used for public transport: Auto Liability Insurance: with coverage for "Owned," "Non-Owned," and "Hired Autos" and personal and property protection insurance, including residual liability insurance under New York no fault insurance law:	

	<ul style="list-style-type: none"> • Seating capacities of 1 to 9 including the driver: 	\$2,000,000 combined single limit for bodily injury and property damage.
	<ul style="list-style-type: none"> • Seating capacities of 10 to 15 including the driver: 	\$3,000,000 combined single limit for bodily injury and property damage.
	<ul style="list-style-type: none"> • Seating capacities of 16 or more including the driver: 	\$5,000,000 combined single limit for bodily injury and property damage.
(f)	Professional Liability (Errors And Omissions)	\$1,000,000 each occurrence

The Commercial General Liability insurance policy shall include an endorsement naming "Montgomery County" and "Ardent Solutions, Inc." as an additional insured. The additional insured endorsement shall provide coverage to the additional insured with respect to liability arising out of the named insured's ongoing work or operations performed for the additional insured under the terms of this Contract. The commercial general liability policy shall state that the Contractor's insurance is primary and not excess over any insurance already carried by the Montgomery County and shall provide blanket contractual liability insurance for all written contracts.

Each such policy shall contain the following cross-liability wording: "In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder."

All insurance required by this Contract shall be written on an occurrence-based policy form, if the same is commercially available.

The Commercial General Liability policy shall be endorsed to have the general aggregate apply to the Services provided under this Contract only.

If during the term of this Contract changed conditions or other pertinent factors should, in the reasonable judgment of the County, render inadequate the insurance limits, the Contractor shall furnish on demand such additional coverage or types of coverage as may reasonably be required under the circumstances. All such insurance shall be effected at the Contractor's expense, under valid and enforceable policies, issued by insurers licensed to conduct business in New York State and are otherwise acceptable to the County.

All insurance policies shall name the Contractor as the insured and shall provide a commitment from the insurer that such policies shall not be canceled or reduced without at least thirty (30) days prior written notice to the County. Certificates of insurance evidencing the coverage required by this Article 10 shall, in a form acceptable to the County, be submitted to the County prior to the commencement of the Services and at least fifteen (15) days prior to the expiration dates of expiring policies.

If any work is subcontracted in connection with this Contract, the Contractor shall require each Subcontractor to effect and maintain the types and limits of insurance set forth in this Article 10 and shall require documentation of same, copies of which documentation shall be promptly furnished to the County.

The Contractor shall be responsible for payment of all deductibles contained in any insurance required under this Contract. The provisions requiring the Contractor to carry the insurance required under this Article 10 shall not be construed in any manner as waiving or restricting the liability of the Contractor under this Contract.

Article 11.
Default and Termination

This Contract shall remain in full force and effect until the end of its term unless otherwise terminated for cause or convenience according to the provisions of this Article 11.

The County reserves the right to terminate this Contract for cause. Cause is an event of default.

- (a) An event of default shall occur if there is a material breach of this Contract, and shall include the following:
 - (1) The Contractor fails to begin work in accordance with the terms of this Contract; or
 - (2) The Contractor, in the judgment of the County, is unnecessarily, unreasonably, or willfully delaying the performance and completion of the Work Product or Services; or
 - (3) The Contractor ceases to perform under the Contract; or
 - (4) The County is of the opinion that the Services cannot be completed within the time provided and that the delay is attributable to conditions within the Contractor's control; or
 - (5) The Contractor, without just cause, reduces its work force on this Contract to a number that would be insufficient, in the judgment of the County, to complete the Services within a reasonable time, and the Contractor fails to sufficiently increase such work force when directed to do so by the County; or
 - (6) The Contractor assigns, transfers, conveys or otherwise disposes of this Contract in whole or in part without prior approval of the County; or
 - (7) Any County officer or employee acquires an interest in this Contract so as to create a conflict of interest; or
 - (8) The Contractor violates any of the provisions of this Contract, or disregards applicable laws, ordinances, permits, licenses, instructions or orders of the County; or
 - (9) The performance of the Contract, in the sole judgment of the County, is substandard, unprofessional, or faulty and not adequate to the demands of the task to be performed; or

- (10) The Contractor fails in any of the agreements set forth in this Contract; or
 - (11) The Contractor ceases to conduct business in the normal course; or
 - (12) The Contractor admits its inability to pay its debts generally as they become due.
- (b) If the County finds an event of default has occurred, the County may issue a Notice of Termination for Cause setting forth the grounds for terminating the Contract. Upon receiving a Notice of Termination for Cause, the Contractor shall have ten (10) calendar days within which to cure such default. If the default is cured within said ten (10) day period, the right of termination for such default shall cease. If the default is not cured to the satisfaction of the County, this Contract shall terminate on the thirtieth calendar day after the Contractor's receipt of the Notice of Termination for Cause unless the County, in writing, gives the Contractor additional time to cure the default. If the default is not cured to the satisfaction of the County within the additional time allowed for cure, this Contract shall terminate for cause at the end of the extended cure period.
- (c) If, after issuing a Notice of Termination for Cause, the County determines that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued as a Notice of Termination for Convenience. Alternatively, in the County's discretion, the Notice of Termination for Cause may be withdrawn and the Contract, if terminated, may be reinstated.
- (d) The Contractor shall be liable to the County for any damages it sustains by virtue of the Contractor's breach or any reasonable costs the County might incur in enforcing or attempting to enforce this Contract. Such costs shall include reasonable fees and expenses for attorneys, expert witnesses and other consultants. However, if the Contractor makes a written offer prior to the initiation of litigation or arbitration, then the County shall not be entitled to such attorney fees unless the County declines the offer and obtains a verdict or judgment for an amount more than ten percent (10%) above the amount of the Contractor's last written offer prior to the initiation of litigation or arbitration. The County may withhold any payment(s) to the Contractor, in an amount not to exceed the amount claimed in good faith by the County to represent its damages, for the purpose of setoff until such time as the exact amount of damages due to the County from the Contractor is determined. It is expressly understood that the Contractor shall remain liable for any damages the County sustains in excess of any setoff.
- (e) The County's remedies outlined in this Article 11 shall be in addition to any and all other legal or equitable remedies permissible.

The County shall have the right to terminate this Contract at any time at its convenience by giving the Contractor five (5) business days written Notice of Termination for Convenience. As of the effective date of the termination, the County will be obligated to pay the Contractor the following: (a) the fees or commissions for Services completed and accepted in accordance with Exhibit A in the amounts provided for in Exhibit B; (b) the fees for Services performed but not completed prior to the date of termination in accordance with Exhibit A in the amounts set forth in the Contractor's rate schedule as provided in Exhibit B; and (c) the Contractor's costs and expenses incurred prior to the date of the termination for items that are identified in Exhibit B. The amount due to the Contractor shall be reduced by payments already paid to the Contractor by the County. In no event shall the County pay the Contractor more than maximum price, if one is stated, of this Contract.

After receiving a Notice of Termination for Cause or Convenience, and except as otherwise directed by the County, the Contractor shall:

- (1) Stop work under the Contract on the date and to the extent specified in the Notice of Termination;
- (2) Obligate no additional Contract funds for payroll costs and other costs beyond such date as the County shall specify, and place no further orders on subcontracts for material, services, or facilities, except as may be necessary for completion of such portion of the Services under this Contract as is not terminated;
- (3) Terminate all orders and subcontracts to the extent that they relate to the portion of the Services terminated pursuant to the Notice of Termination;
- (4) Preserve all Records and submit to the County such Records and reports as the County shall specify, and furnish to the County an inventory of all furnishings, equipment, and other property purchased for the Contract, if any, and carry out such directives as the County may issue concerning the safeguarding or disposition of files and property; and
- (5) Submit within thirty (30) days a final report of receipts and expenditures of funds relating to this Contract, and a list of all creditors, Subcontractors, lessors and other parties, if any, to whom the Contractor has become financially obligated pursuant to this Contract.

After termination of the Contract, each party shall have the duty to assist the other party in the orderly termination of this Contract and the transfer of all rights and duties arising under the Contract, as may be necessary for the orderly, un-disrupted continuation of the business of each party.

Article 12. Assignment

The Contractor shall not assign, transfer, convey or otherwise dispose of any interest whatsoever in this Contract without the prior written consent of the County; however, claims for money due or to become due to the Contractor may be assigned to a financial institution without such approval. Notice of any assignment to a financial institution or transfer of such claims of money due or to become due shall be furnished promptly to the County. If the Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause stating that the right of the assignee to any monies due or to become due shall be subject to prior liens of all persons, firms, and corporations for Services rendered or materials supplied for the performance of the Services called for in this Contract.

Article 13. Subcontracting

None of the Services covered by this Contract shall be subcontracted without the prior written approval of the County and, if required, any grantor agency. The County reserves the right to withhold approval of subcontracting such portions of the Services where the County determines that such subcontracting is not in the County's best interests.

Each subcontract entered into shall provide that the provisions of this Contract shall apply to the Subcontractor and its Associates in all respects. The Contractor agrees to bind each Subcontractor and each Subcontractor shall agree to be bound by the terms of the Contract insofar as applicable to the work or services performed by that Subcontractor.

13.01 The Contractor and the Subcontractor jointly and severally agree that no approval by the County of any proposed Subcontractor, nor any subcontract, nor anything in the Contract, shall create or be deemed to create any rights in favor of a Subcontractor and against the County, nor shall it be deemed or construed to impose upon the County any obligation, liability or duty to a Subcontractor, or to create any contractual relation whatsoever between a Subcontractor and the County.

The provisions contained in this Article 13 shall apply to subcontracting by a Subcontractor of any portion of the work or services included in an approved subcontract.

The Contractor agrees to indemnify, defend, and hold the County harmless against any claims initiated against the County pursuant to any subcontracts the Contractor enters into in performance of this Contract. The County's approval of any Subcontractor shall not relieve the Contractor of any of its responsibilities, duties and liabilities under this Contract. The Contractor shall be solely responsible to the County for the acts or defaults of its Subcontractors and of each Subcontractor's Associates, each of whom shall for this purpose be deemed to be the agent or employee of the Contractor.

Article 14.
Conflict of Interest

The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the Services under this Contract. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed by it.

The Contractor further covenants that no officer, agent, or employee of the County and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or performance of this Contract has any personal or financial interest, direct or indirect, in this Contract or in its proceeds, whether such interest arises by way of a corporate entity, partnership, or otherwise.

The Contractor warrants (a) that it has not employed and will not employ any person to solicit or secure this Contract upon any agreement or arrangement for payment of a commission, percentage, brokerage fee, or contingent fee, other than bona fide employees working solely for the Contractor either directly or indirectly, and (b) that if this warranty is breached, the County may, at its option, terminate this Contract without penalty, liability or obligation, or may, at its option, deduct from any amounts owed to the Contractor under this Contract any portion of any such commission, percentage, brokerage, or contingent fee.

The Contractor covenants not to employ an employee of the County for a period of one (1) year after the date of termination of this Contract without written County approval.

Article 15.
Confidential Information

In order that the Contractor may effectively fulfill its covenants and obligations under this Contract, it may be necessary or desirable for the County to disclose confidential and proprietary information to the Contractor or its Associates pertaining to the County's past, present and future activities. Since it is difficult to separate confidential and proprietary information from that which is not, the Contractor shall regard, and shall instruct its Associates to regard, all information gained as confidential and such information shall not be disclosed to any organization or individual without the prior consent of the County. The above obligation shall not apply to information already in the public domain or information required to be disclosed by a court order.

The Contractor agrees to take appropriate action with respect to its Associates to ensure that the foregoing obligations of non-use and non-disclosure of confidential information shall be fully satisfied.

Article 16.
Compliance with Laws

The Contractor shall comply with and shall require its Associates to comply with all applicable federal, state and local laws.

The Contractor shall hold the County harmless with respect to any damages arising from any violation of law by it or its Associates. The Contractor shall commit no trespass on any public or private property in performing any of the Services encompassed by this Contract. The Contractor shall require as part of any subcontract that the Subcontractor comply with all applicable laws and regulations.

Article 17.
Amendments

The County may consider it in its best interest to change, modify or extend a covenant, term or condition of this Contract or require the Contractor to perform Additional Services that are not contained within the Scope of Services as set forth in Exhibit A. Any such change, addition, deletion, extension or modification of Services may require that the compensation paid to the Contractor by the County be proportionately adjusted, either increased or decreased, to reflect such modification. If the County and the Contractor mutually agree to any changes or modification of this Contract, the modification shall be incorporated into this Contract by written Amendment.

Compensation shall not be modified unless there is a corresponding modification in the Services sufficient to justify such an adjustment. If there is any dispute as to compensation, the Contractor shall continue to perform the Services under this Contract until the dispute is resolved.

No Amendment to this Contract shall be effective and binding upon the parties unless it expressly makes reference to this Contract, is in writing, is signed and acknowledged by duly authorized representatives of both parties, is approved by the appropriate County departments and the Board of Legislators.

The County shall not be bound by Unauthorized Acts of its employees, agents, or representatives with regard to any dealings with the Contractor and any of its Associates.

Article 18.
Fair Employment Practices

The Contractor shall comply with, and shall require any Subcontractor to comply with, all federal, state and local laws governing fair employment practices and equal employment opportunities.

The Contractor agrees that it shall, at the point in time it solicits any subcontract, notify the potential Subcontractor of their joint obligations relative to non-discrimination under this

Contract, and shall include the provisions of this Article 18 in any subcontract, as well as provide the County a copy of any subcontract upon request.

Breach of the terms and conditions of this Article 18 shall constitute a material breach of this Contract and may be governed by the provisions of Article 11, "Default and Termination."

Article 19. Notices

All notices, consents, approvals, requests and other communications ("Notices") required or permitted under this Contract shall be given in writing, mailed by postage prepaid, certified or registered first-class mail, return receipt requested, and addressed as follows:

If to the Department on behalf of the County:

If to the Contractor:

All Notices shall be deemed given on the day of mailing. Either party to this Contract may change its address for the receipt of Notices at any time by giving notice of the address change to the other party. Any Notice given by a party to this Contract must be signed by an authorized representative of such party.

The Contractor agrees that service of process at the address and in the manner specified in this Article 19 shall be sufficient to put the Contractor on notice of such action and waives any and all claims relative to such notice.

Article 20. Proprietary Rights and Indemnity

The Contractor shall not relinquish any proprietary rights in its intellectual property (copyright, patent, and trademark), trade secrets or confidential information as a result of the Services provided under this Contract. Any Work Product provided to the County under this Contract shall not include the Contractor's proprietary rights, except to the extent licensed to the County.

The County shall not relinquish any of its proprietary rights, including, but not limited to, its data, privileged or confidential information, or methods and procedures, as a result of the Services provided under this Contract.

The parties acknowledge that should the performance of this Contract result in the development of new proprietary and secret concepts, methods, techniques, processes, adaptations, discoveries, improvements and ideas ("Discoveries"), and to the extent said Discoveries do not include modifications, enhancements, configurations, translations, derivative works, and interfaces from the Contractor's intellectual property, trade secrets or confidential information, said Discoveries shall be deemed "Work(s) for Hire" and shall be promptly reported to the County and shall belong solely and exclusively to the County without regard to their

origin, and the Contractor shall not, other than in the performance of this Contract, make use of or disclose said Discoveries to anyone. At the County's request, the Contractor shall execute all documents and papers and shall furnish all reasonable assistance requested in order to establish in the County all right, title and interest in said Discoveries or to enable the County to apply for United States patents or copyrights for said Discoveries, if the County elects to do so.

Any Work Product provided by the Contractor to the County under this Contract shall not be disclosed, published, copyrighted or patented, in whole or in part, by the Contractor. The right to the copyright or patent in such Work Product shall rest exclusively in the County. Further, the County shall have unrestricted and exclusive authority to publish, disclose, distribute and otherwise use, in whole or in part, any of the Work Product. If Work Product is prepared for publication, it shall carry the following notation on the front cover or title page: "This document was prepared for, and is the exclusive property of, the Montgomery County, New York, a municipal corporation."

The Contractor warrants that the performance of this Contract shall not infringe upon or violate any patent, copyright, trademark, trade secret or proprietary right of any third party. In the event of any legal action related to the above obligations of the Contractor filed by a third party against the County, the Contractor shall, at its sole expense, indemnify, defend and hold the County harmless against any loss, cost, expense or liability arising out of such claim, whether or not such claim is successful.

The making of payments, including partial payments by the County to the Contractor, shall vest in the County title to, and the right to take possession of, all Work Product produced by the Contractor up to the time of such payments, and the County shall have the right to use said Work Product for public purposes without further compensation to the Contractor or to any other person.

Upon the completion or other termination of this Contract, all finished or unfinished Work Product prepared by the Contractor shall, at the option of the County, become the County's sole and exclusive property whether or not in the Contractor's possession. Such Work Product shall be free from any claim or retention of rights on the part of the Contractor and shall promptly be delivered to the County upon the County's request. The County shall return all of the Contractor's property to it. The Contractor acknowledges that any intentional failure or unreasonable delay on its part to deliver the Work Product to the County will cause irreparable harm to the County not adequately compensable in damages and for which the County has no adequate remedy at law. The Contractor accordingly agrees that the County may in such event seek and obtain injunctive relief in a court of competent jurisdiction to compel delivery of the Work Product, to which injunctive relief the Contractor consents, as well as seek and obtain all applicable damages and costs. The County shall have full and unrestricted use of the Work Product for the purpose of completing the Services.

Article 21.
Force Majeure

No failure or delay in performance of this Contract, by either party, shall be deemed to be a breach thereof when such failure or delay is caused by a force majeure event including, but not limited to, any Act of God, strikes, lockouts, wars, acts of terrorism, riots, epidemics, explosions, sabotage, breakage or accident to equipment, the binding order of any court or governmental authority, or any other cause, whether of the kind herein enumerated or otherwise, not within the control of a party. In the event of a dispute between the parties with regard to what constitutes a force majeure event, the County's reasonable determination shall be controlling.

Article 22.
Waiver

The County shall not be deemed to have waived any of its rights under this Contract unless such waiver is in writing and signed by the County.

No delay or omission on the part of the County in exercising any right shall operate as a waiver of such right or any other right. A waiver on any one (1) occasion shall not be construed as a waiver of any right on any future occasion.

No failure by the County to insist upon the strict performance of any covenant, agreement, term or condition of this Contract or to exercise any right, term or remedy consequent upon its breach shall constitute a waiver of such covenant, agreement, term, condition, or breach.

Article 23.
Miscellaneous

If any provision of this Contract or its application to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Contract shall not be affected and shall remain valid and enforceable to the fullest extent permitted by law.

This Contract contains the entire agreement between the parties and all prior negotiations and agreements are merged into this Contract. Neither the County nor the County's agents have made any representations except those expressly set forth in this Contract, and no rights or remedies are, or shall be, acquired by the Contractor by implication or otherwise unless expressly set forth in this Contract. The Contractor waives any defense it may have to the validity of the execution of this Contract.

Unless the context otherwise expressly requires, the words "herein," "hereof," and "hereunder," and other words of similar import, refer to this Contract as a whole and not to any particular section or subdivision.

The headings of the sections of this Contract are for convenience only and shall not be used to construe or interpret the scope or intent of this Contract or in any way affect the same.

This Contract and all actions arising under it shall be governed by, subject to, and construed according to the law of the State of New York. The Contractor agrees, consents and submits to the exclusive personal jurisdiction of any state or federal court of competent jurisdiction in Montgomery County, New York, for any action arising out of this Contract. The Contractor also agrees that it shall not commence any action against the County because of any matter whatsoever arising out of or relating to the validity, construction, interpretation and enforcement of this Contract in any state or federal court of competent jurisdiction other than one in Montgomery County, New York.

If any Associate of the Contractor shall take any action that, if done by a party, would constitute a breach of this Contract, the same shall be deemed a breach by the Contractor.

The rights and remedies set forth in this Contract are not exclusive and are in addition to any of the rights or remedies provided by law or equity.

For purpose of the hold harmless and indemnity provisions contained in this Contract, the term "County" shall be deemed to include Montgomery County and all other associated, affiliated, allied or subsidiary entities or commissions, now existing or subsequently created, and their officers, agents, representatives, and employees.

The Contractor covenants that it is not, and shall not become, in arrears to the County upon any contract, debt, or other obligation to the County including, without limitation, real property, personal property and income taxes, and water, sewage or other utility bills.

This Contract may be executed in any number of originals, any one of which shall be deemed an accurate representation of this Contract. Promptly after the execution of this Contract, the County shall provide a copy to the Contractor.

As used in this Contract, the singular shall include the plural, the plural shall include the singular, and a reference to either gender shall be applicable to both.

The rights and benefits under this Contract shall ensure to Montgomery County and its agents, successors, and assigns.

The County shall have the right to recover by setoff from any payment owed to the Contractor all delinquent withholding, income, corporate and property taxes owed to the County by the Contractor, any amounts owed to the County by the Contractor under this Contract or other contracts, and any other debt owed to the County by the Contractor.

(Signatures appear on next page)

The County and the Contractor, by and through their duly authorized officers and representatives, have executed this Contract as follows:

Witnesses:

Name

Title

Contractor:

Name

Title

Witnesses:

Name

Title

Montgomery County

Name

Title

THIS CONTRACT WAS APPROVED BY THE COUNTY LEGISLATURE ON: OF
MONTGOMERY COUNTY

Date

Board Chairman

County Attorney

THIS CONTRACT IS NOT VALID OR AUTHORIZED UNTIL APPROVED BY
RESOLUTION OF THE BOARD OF LEGISLATORS AND SIGNED BY THE BOARD
CHAIRMAN.

EXHIBIT A
SCOPE OF SERVICES

I. Notice to Proceed

The term of this Contract shall begin on_____, 20 and shall terminate on_____, 20 . The Contractor shall commence performance of this Contract upon receipt of a written “Notice to Proceed” from the County and in the manner specified in the Notice to Proceed.

II. Services to be Performed

[To be developed on the basis of the scope, and associated requirements provided in the General Conditions, Special Conditions and Specific Requirements]

EXHIBIT B
FEE SCHEDULE

I. General

Payment for the proper performance of the Services shall be contingent upon receipt by the County of invoices for payment. Each invoice shall certify the total cost, itemizing costs when applicable. Each invoice must be received by the County not more than thirty (30) days after the close of the calendar month in which the services were rendered and must be signed by an authorized officer or designee of the Contractor.

II. Contract Fees

[As provided in the proposal]

III. Project Billing

[As provided in the General Conditions, Special Conditions and Specific Requirements]

EXHIBIT C
COUNTY ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

The foregoing contract was acknowledged before me the _____ day of _____,
20____, by _____, (name of person who signed the contract)
the _____, (title of person who signed the contract as it appears on the
contract) of _____, (complete name of the County department) on
behalf of the County.

Notary Public

EXHIBIT D
CORPORATE ACKNOWLEDGEMENT

STATE OF _____

COUNTY OF _____

The foregoing document was acknowledged before me on the _____ day of _____ in the year _____ by _____ (name of person who signed the document), the _____, (title of person who signed the contract as it appears on the contract) of _____, (complete name of the Corporation); and that he/she/they signed his/her/their name(s) thereto by authority of the board of directors of said Corporation.

Notary Public

EXHIBIT E
CERTIFICATE OF AUTHORITY

I, _____, Corporate Secretary of _____
(complete name of corporation), a _____ (state of corporation) corporation (the
"Corporation), DO HEREBY CERTIFY that the following is true and correct excerpt from the
minutes of the meeting of the Board of Directors duly called and held on _____ (date of
meeting), and that the same is now in full force and effect.

"RESOLVED, that the Chairman, the President, each Vice President, the Treasurer, and
the Secretary and each of them, is authorized to execute and deliver, in the name of and on
behalf of the Corporation and under its corporate seal or otherwise, any agreement or other
instrument or document ('Contract') in connection with any matter or transaction that shall
have been duly approved; and the execution and delivery of any Contract by any of the
aforementioned officers shall be conclusive evidence of such approval."

FURTHER, I CERTIFY that _____ is Chairman,
_____ is President,
_____ is (are) Vice President(s),
_____ is Treasurer,
_____ is Secretary,
_____ is Executive Director, and
_____ is _____.

FURTHER, I CERTIFY that any of the aforementioned officers or employees of the
Corporation are authorized to execute and commit the Corporation to the conditions, obligations,
stipulations and undertakings contained in the foregoing Contract between the County and the
above-referenced Corporation and that all necessary corporate approvals have been obtained
in relationship thereto.

IN WITNESS THEREOF, I have set my hand this _____ day of _____, 20____.
CORPORATE SEAL (if any)

Corporation Secretary

**PLEASE NOTE THAT THE PERSON WHO SIGNS THE CONTRACT ON BEHALF
OF YOUR CORPORATION MUST BE ONE OF THE INDIVIDUALS LISTED
ABOVE AS THE PERSON AUTHORIZED TO EXECUTE CONTRACTS IN THE
NAME OF AND ON BEHALF OF THE CORPORATION.**

EXHIBIT F
119R AGREEMENT

AGREEMENT made this _____ day of _____, 20__ by and between the County of _____, State of New York, herein after referred to as the County; and _____ hereinafter referred to as the Carrier.

WHEREAS, Section 119-r of the General Municipal Law of the State of New York authorizes a municipality of the State of New York to enter into a transactional relationship with a private bus system for the performance of certain transportation operations, and

WHEREAS, pursuant to the authority of said Section 119-r of the General Municipal Law, the Legislature of the State of New York by Section 18-b of the Transportation Laws of the State of New York enacted an assistance program for passenger transportation in the State of New York, and

WHEREAS, said Section 18-b provides that a municipality may make application to the Department of Transportation of the State of New York for receipt of funds for the maintenance of existing bus transportation. Services which said funds upon receipt by the municipality are to be matched by said municipality, and

WHEREAS, the municipality pursuant to the provisions of Section 119-r of the General Municipal Law of the State of New York is authorized to enter into a contract for the performance of certain bus transportation service by a private bus company and pursuant to said statute to pay over to said bus company the funds authorized by Section 18-b of the Laws of 1975 on a matching basis, and any supplemental State operating assistance appropriations, and

WHEREAS, the County pursuant to said matching provision has made application to the Department of Transportation of the State of New York for receipt of funds authorized by said statutory provision, and

When so required by the County, the Carrier will attach to said application to be filed by the County with the Department of Transportation of the State of New York, a copy of a transportation service contract between the Carrier and the County.

NOW THEREFORE, in consideration of the covenants herein set forth, it is, mutually agreed and understood by and between the parties hereto as follows:

1. The County will pay the Carrier with STOA funds, in whole or in part. STOA funds will be generated by the Carrier and by other Carriers and distributed to the Contractor per an Alternative Distribution Plan on file with NYSDOT. The STOA money amount to be paid is contingent on a cost sharing formula. This sharing involves a transit share and other participating partners' shares in the Public Transit system. Currently NEMT is one of those partners. The Transit "share" is to be paid with STOA generated by the Carrier, by the STOA Alternative Distribution Plan, Fare box receipts, by Federal, and County transit funds. The formula for this cost sharing is set by the County. By installing the Alternative distribution plan and the Cost sharing formula, The Carrier forfeits acknowledges said installation in place of pass through features of the STOA monies implied in the STOA regulations.
2. The Carrier shall maintain all its accounting records in compliance with the applicable rules and regulations of the Commissioner of Transportation of the State of New York, and shall file all periodic statements and reports as may be required by the County and/or the Department of Transportation of the State of New York;
3. That included herein by reference in this agreement are the provisions authorized by Section 103-A and 133-B of the General Municipal Law with respect to waiver of immunity;
4. While it is anticipated that the funds issued by the Department of Transportation of the State of New York shall be made upon a quarterly basis upon the quarterly application of the County based upon the quarterly application of the Carrier, the funds to be issued by the County herein shall only be upon receipt and as received from the Department of Transportation of the State of New York;
5. This agreement shall remain in full force and effect for the duration of the program under which funds are provided to the County by the State of New York and in the event that no further funds are appropriated or made available to the County by the State of New York, then and in that event, this agreement shall terminate;
6. Notwithstanding the provisions of par. (7) above, this agreement may be terminated by the County without incurring liability to the Carrier therefore, upon ninety (90) days' notice duly given to the Carrier and the NTS Department of Transportation by the County upon the authority of the County Legislature, or Board of Supervisors;
7. The Carrier agrees, to protect, defend, indemnify and hold the County and its employees free and harmless from and against any and all losses, claims, liens, demands and causes of action of every kind and character including, but not limited to, the amount of judgments, penalties, interest, court costs, or legal fees incurred by the County arising in favor of any party, including claims, liens, debts, personal injuries, including employees of the County, death or damages to property (including property of the County) and without limitation by enumeration, all other claims or demands of every character occurring or in anywise incident to, in connection with or arising directly or indirectly out of this agreement.

The Carrier agrees to investigate, handle, respond to, provide defense for and defend any such claims demands, or suits at its sole expense and agrees to bear all other costs and expenses related thereto, even if such claims, demands, or suits are groundless, false or fraudulent. The Carrier further agrees that it will cause the County to be included as an additional insured on any and all policies of insurance now carried by the Carrier.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers as of the day and year first above written.

(Seal)

COUNTY OF _____

Date

By: _____
Chairman, County
Legislature

(Seal)

Carrier

Date

By: _____
President Title

Approved as to form

, 20__

County Attorney

CORPORATE ACKNOWLEDGEMENT

STATE OF _____

COUNTY OF _____

On this _____ day of _____, 20____, before me personally came

_____ to me known, and known to me to be the
_____ of _____

the corporation described in and which executed the within instrument, who being by me duly sworn did depose and say that he/she said _____ resides at

_____ and that he is of said corporation; that the seal affixed to the within instrument is such corporate seal and that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Notary Public

SECTION VII

Federally Required Clauses

Federal Clauses

Fly America Requirements – Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

Charter Bus Requirements – Applicability – Operational Service Contracts. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor shall comply with 49 USC 5323(d) and (g) and 49 CFR 604, which state that recipients and subrecipients of FTA assistance may provide charter service for transportation projects that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, "Charter Service," 49 CFR part 604, the terms and conditions of which are incorporated herein by reference.

School Bus Requirements – Applicability – Operational Service Contracts. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Pursuant to 69 USC 5323(f) or (g) as amended by MAP-21, 23 USC 133, 23 USC 142, and 49 CFR 605, recipients and subrecipients of FTA assistance shall not engage in school bus operations exclusively for transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients shall not use federally funded equipment, vehicles, or facilities. Violations. If a Recipient or any Third Party Participant that has operated school bus service in violation of FTA's School Bus laws and regulations, FTA may: (1) Require the Recipient or Third Party Participant to take such remedial measures as FTA considers appropriate, or (2) Bar the Recipient or Third Party Participant from receiving Federal transit funds.

Energy Conservation – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

Clean Water – Applicability – All Contracts and Subcontracts over \$150,000. Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

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

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

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

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

Federal Changes – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the recipient and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

Clean Air – Applicability – All contracts over \$150,000. 1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. 2) Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

Recycled Products – Applicability – All contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the current or previous fiscal year using Federal funds. The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

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

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in para. (1) of this section, contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in para. (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.

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

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

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

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

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

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

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

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

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

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

b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.

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

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

f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work. Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

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

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

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

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

an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

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

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

Government-Wide Debarment and Suspension (Nonprocurement) – Applicability – Contracts over \$25,000 The Recipient agrees to the following:

(1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," <https://www.sam.gov>, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debar, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

Contracts Involving Federal Privacy Act Requirements – Applicability – When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

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

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

Civil Rights Requirements – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) The following requirements apply to the underlying contract: The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute): (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,

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

c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with FTA Circular 4704.1 other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer". (3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note,

d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of Map-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating

assistance that will award prime third party contracts exceeding \$250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under Map-21 and previous legislation,

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

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

g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of "employer," (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37, (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27, (c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35, (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36, (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194, and (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2,

i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: 1) Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005,

j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

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

Breaches and Dispute Resolution – Applicability – All contracts over \$250,000 Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient's authorized representative. This decision shall be final and conclusive unless within ten days from the date of receipt of this copy, contractor mails or otherwise furnishes a written appeal to the recipient's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient's CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved. Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

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

arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

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

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

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

(1) U.S. DOL Certification. When its Project involves public transportation operations and is financed with funding made available or appropriated for 49 U.S.C. §§ 5307, 5309, 5312, 5337, or 5339, as amended by Map-21, or former 49 U.S.C. §§ 5308, 5309, 5312, or other provisions of law as required by the Federal Government, U.S. DOL must provide a Certification of employee protective arrangements before FTA may provide financial assistance for the Project. Therefore, the Recipient understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that: (a) It must carry out the Project as provided in its U.S. DOL Certification, which contains the terms and conditions that U.S. DOL has determined to be fair and equitable to protect the interests of any employees affected by the Project, (b) It must comply with 49 U.S.C. § 5333(b), and any future amendments thereto, (c) It will follow the U.S. DOL guidelines, "Guidelines, Section 5333(b), Federal Transit Law," 29 C.F.R. part 215, except as U.S. DOL determines otherwise in writing, (d) It must comply with the terms and conditions of the U.S. DOL certification of public transportation employee protective arrangements for the Project, which certification is dated as identified on the Underlying Agreement, including: 1 Alternative comparable arrangements U.S. DOL has specified for the Project, 2 Any revisions U.S. DOL has specified for the Project, or 3 Both, and (e) It must comply with the following documents and provisions incorporated by reference in and made part of the Underlying Agreement for the Project: 1 The U.S. DOL certification of public transportation employee protective arrangements for the Project, which certification is dated as identified on the Underlying Agreement, 2 The documents cited in that U.S. DOL certification for the Project, 3 Any alternative comparable arrangements that U.S. DOL has specified for the Project, and 4 Any revisions that U.S. DOL has specified for the Project,

(2) Special Warranty. When its Project involves public transportation operations, and is financed with funding made available or appropriated for 49 U.S.C. § 5311, as amended by Map-21, for former 49 U.S.C. § 5311 in effect in FY 2012, or a previous fiscal year, or for section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, U.S. DOL will provide a Special Warranty for those projects, including projects under the Tribal Transit Program. Therefore, the Recipient understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that: (a) It must comply with Federal transit laws, specifically 49 U.S.C. § 5333(b), (b) Follow the U.S. DOL guidelines, "Guidelines, Section 5333(b), Federal Transit Law," 29 C.F.R. part 215, except as U.S. DOL determines otherwise in writing, (c) It will comply with the U.S. DOL Special Warranty for its Project that is most current on the date when it executed the Underlying Agreement, and documents cited therein, including: 1 Any alternative comparable arrangements U.S. DOL has specified for the Project, 2 Any revisions U.S. DOL has specified for the Project, or 3 Both, and (d) It will comply with the following documents and provisions incorporated by reference in and made part of the Underlying Agreement: 1 The U.S. DOL Special Warranty for its Project, 2 Documents cited in that Special Warranty, 3 Alternative comparable arrangements U.S. DOL specifies for the Project, and 4 Any revisions that U.S. DOL has specified for the Project, and

(3) Special Arrangements for 49 U.S.C. § 5310 Projects. The Recipient understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that although pursuant to 49 U.S.C. § 5310, and former 49 U.S.C. §§ 5310 or 5317, FTA has determined that it was not "necessary or appropriate" to apply the conditions of 49 U.S.C. § 5333(b) to Subrecipients participating in the program to provide public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make the following exceptions: (a) FTA will make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and (b) FTA reserves the right to make other exceptions as it deems appropriate.

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

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.
- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. If a separate contract goal has been established, Bidders/offers are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.
- d. If no separate contract goal has been established, the successful bidder/offers will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.
- f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

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

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the 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 Recipient. This clause applies to both DBE and non-DBE subcontracts.

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

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the

contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

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

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

Other Federal Requirements:

Full and Open Competition - In accordance with 49 U.S.C. § 5325(h) all procurement transactions shall be conducted in a manner that provides full and open competition.

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

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

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

Notification of Federal Participation - To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

Interest of Members or Delegates to Congress - No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

Ineligible Contractors and Subcontractors - Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

Other Contract Requirements - To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

Compliance With Federal Regulations - Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Real Property - Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by Map-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Access to Services for Persons with Limited English Proficiency - To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

Environmental Justice - Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

Environmental Protections - Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

Geographic Information and Related Spatial Data - (NOT APPLICABLE TO THE TRIBAL TRANSIT PROGRAM) Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

Geographic Preference - All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposed to be amended in 2 CFR Part 1201).

Federal Single Audit Requirements - For State Administered Federally Aid Funded Projects Only Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non Profit Organizations" (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO). Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments. Catalog of Federal Domestic Assistance (CFDA) Identification Number The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

Veterans Preference - As provided by 49 U.S.C. 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients: (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

Safe Operation of Motor Vehicles

a. Seat Belt Use. The Recipient agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by: (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles, and (2) Including a "Seat Belt Use" provision in each third party agreement related to the Award. b. Distracted Driving, Including Text Messaging While Driving. The Recipient agrees to comply with: (1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225), (2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, and (3) The following U.S. DOT Special Provision pertaining to Distracted Driving: (a) Safety. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award, (b) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving, and (c) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34.b(3)(a) – (b) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

Catalog of Federal Domestic Assistance (CFDA) Identification Number - The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

The CFDA number for the Federal Transit Administration - Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable) agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

Organizational Conflicts of Interest - The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

SECTION VIII

New York State Required Clauses

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

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

any State approved sums due and owing for work done upon the project.

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this

contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00,

whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment

opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

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

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

20. OMNIBUS PROCUREMENT ACT OF 1992 (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS). It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

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

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

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

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable,

Contractors certify that whenever the total bid amount is greater than \$1 million:

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

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

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

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

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

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

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal,

legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

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

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:

<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

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

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the

investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

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