

REQUEST FOR PROPOSALS

FOR

COLLEGE TOWN SATELLITE TRANSIT CENTER PROJECT:
AE SERVICES

**ROCHESTER-GENESEE REGIONAL
TRANSPORTATION AUTHORITY/
REGIONAL TRANSIT SERVICE, INC.
1372 EAST MAIN STREET
ROCHESTER, NY 14609**

February 7, 2011



See Section I “Request for Proposals” Section for information limiting the individuals at RGRTA who can be contacted with respect to this Request for Proposals/Invitation for Bids

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KEY EVENTS/DATES

The following Schedule of Key Events and Dates represents the Authority's best estimate of the schedule that shall be followed.

The Authority reserve the right, at its sole discretion, to adjust this schedule as it deems necessary. The Authority will make a good faith effort to notify potential vendors of adjustments to the Schedule; however, ultimate responsibility for obtaining notice of changes in the Schedule of Key Events lies with the potential proposers.

<u>Event</u>	<u>Date</u>	<u>Time</u>
RFP Release	February 7, 2011	
Closing Date for Inquiries	February 28, 2011	11:00 AM
Submission of Proposals	March 9, 2011	3:00 PM
Proposer Interviews	March 21-22, 2011	TBD
Contract Award	April 2011	

Issuance of RFP and Questions

The Issuing Office for this RFP is:

RGRTA
1372 East Main Street
Rochester, New York 14609
Attention: David Dadetta, Manager of Purchasing and Contracts
Telephone: (585) 654-0263
Electronic mail: ddadetta@rgta.com

All questions must be submitted in writing or email to David Dadetta, no later than February 28, 2011 at 11:00 AM.

SECTION I: REQUEST FOR PROPOSALS

The Rochester-Genesee Regional Transportation Authority (RGRTA) is seeking proposals from qualified firms to provide AE Services for the College Town Satellite Transit Center Project.

Firms wishing to be considered shall submit five (5) copies of the proposal, including one (1) with original signatures, on or before **March 9, 2011 at 3:00 p.m.** to the attention of:

David Dadetta
College Town Satellite Center Project- AE Services
Rochester-Genesee Regional Transportation Authority
1372 East Main Street
Rochester, New York 14609

Detailed specifications and contract documents are available from RGRTA by contacting Procurement and Grants Administration via electronic mail (procurement@rgta.com) or by telephone at: (585) 654-0615. Proposals must be submitted in accordance with the terms and conditions of these specifications. Any firm appearing on the Comptroller General's *List of Ineligible Contractors* is not eligible to participate. Fax requests are not recommended, as RGRTA cannot guarantee receipt of fax requests.

Proposals may be delivered by hand or sent by regular mail or other delivery service. Firms submitting proposals are fully responsible for their delivery. Reliance upon mail or public carriers is at the firm's risk. Late proposals will not be considered.

Proposals facsimiled or electronically mailed will not be accepted. It is the Proposer's responsibility to ensure that the proposal has been received by the deadline. Post marking by the due date will not substitute for actual receipt.

The proposals are to be submitted in two envelopes. One envelope is to be labeled "**College Town Satellite Transit Center Project: AE Services - Technical Proposal**". The second part is to be labeled "**College Town Transit Center Project AE Services-Cost Proposal**."

Proposals shall be binding for 90 days after the proposal submission date. RGRTA reserves the right to reject any and all bids for any reason, to waive any minor discrepancies therein, to re-advertise for proposals, and to accept any proposal deemed to be most favorable to RGRTA.

RGRTA is a tax-exempt public benefit Authority. The award of a contract is not subject to Section 103 of the General Municipal Law.

It is RGRTA's policy and practice that DBEs are afforded opportunities to participate in the performance of its contracts in whole or part. Our Commitment, based on Federal Register 49 CFR, Part 23, Section 105 of the Surface Transportation Assistance Act, New York State Executive Order 11426, and the United States Small Business Administration regulations, is to affirmatively insure EEO compliance.

Disadvantaged Business Enterprise (DBE) Participation

In order to meet RGRTA's DBE Program objectives and RGRTA's 10% federal DBE goal, this solicitation is intended to provide opportunities for certified DBE firms to contract with and provide services to RGRTA. **DBEs must be currently certified under the New York State Department of Transportation's DBE Program in order to satisfy RGRTA's program objectives and federal DBE goal.** Certified DBEs are encouraged to respond to this solicitation directly or to partner with other firms.

To obtain a directory of certified DBE firms under the New York State Unified Certification Program please refer to the NYS DOT Website: www.nysdot.gov

Firms electing to subcontract work in response to this solicitation shall make affirmative efforts to involve certified DBEs, and shall provide documentation of the results of those efforts. Firms electing to subcontract work in response to this solicitation, but which are unable to utilize certified DBEs, will be required to document their good-faith efforts to involve certified DBEs as subcontractors, and the reasons why such involvement was not attainable.

Designated Staff for Contacts

Pursuant to State Finance Law §§139-j and 139-k this "Invitation for Bid"/"Request for Proposal" includes and imposes certain restrictions on communications between RGRTA and anyone contacting RGRTA with respect to the IFB/RFP. No one may contact RGRTA or any of its officers, directors or employees, other than the specifically designated staff, with respect to the IFB/RFP during the period starting with the earliest notice of intent to issue the IFB/RFP through final award and approval of the Procurement Contract by RGRTA (called the "Restricted Period") unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). The following are "Designated Staff" for this IFB/RFP and all contacts with respect to this procurement must be made only to the Designated Staff.

David Dadetta
Manager of Purchasing and Contracts
1372 East Main Street
Rochester, New York 14609
Email: ddadetta@rgрта.com

Pursuant to these two statutory sections, RGRTA officers, directors and employees are required to obtain certain information when contacted during the Restricted Period and are also required to make a determination of the responsibility of the person initiating the contact or on whose behalf the contact is initiated. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the party initiating the contact or whose behalf the contract is initiated will be debarred from

obtaining governmental procurement contracts. Further information about these requirements can be obtained from the Designated Staff.

Section II. Project Work

1. Background

The University of Rochester (UR) recently accepted a development proposal from Fairmount Properties of Cleveland Ohio for a UR owned 16 acre site located at the south west corner of the intersection of Elmwood and Mt. Hope Avenues in the City of Rochester. The University's master plan calls for mixed use development at this site combining retail, office, and residential uses, termed "College Town". The City of Rochester has adopted an overlay zoning ordinance to facilitate such development at this location. Rochester Genesee Regional Transportation Authority (the Authority) has also identified this site as a prime location for a satellite transit center, due to the current and assumed future demand for transit services generated by Strong Memorial Hospital and the adjoining medical facilities complex. In addition, significant federal funding opportunities exist for joint development of a transit facility to be incorporated within a mixed use development at the College Town site. Ongoing discussions among the Authority, UR, and Fairmount Properties indicate a strong interest in pursuing a joint development transit project as part of the College Town Project.

2. AE Services

AE services for schematic and preliminary plans for development of a transit facility to be incorporated into College Town concept plans of the chosen private developer, Fairmount Properties.

i. AE Scope of Service:

1. Development of schematic and preliminary plans for construction of a satellite transit station facility and related infrastructure and site improvements. (There are currently nine (9) bus routes carrying more than 1,400 people per day that would utilize a transit station at the College Town development. A previous study of transit infrastructure needs serving the UR and Strong Memorial Hospital identified the need for approximately eight (8) bus bays at the site. Beyond the space needed for buses, the study envisioned an indoor waiting area with customer services and amenities and complimentary retail outlets.) It is anticipated that the satellite transit center will be incorporated into the private mixed use development.
2. Conduct related and necessary site engineering studies for proper planning and environmental impact reviews.

3. As required, act as the Authority's representative to coordinate tasks one and two with the planning efforts of a private developer with respect to architectural themes and potential shared infrastructure/site improvements.
4. Assist in development of a comprehensive project budget (both hard and soft costs) estimate for the satellite transit station facility and related infrastructure
5. Develop estimated annual satellite station operating costs and revenues.
6. Prepare and monitor a comprehensive project task list and schedule.

ii. Deliverables:

1. Schematic site plan and building plans.
2. Preliminary site plan and building plans.
3. Engineering studies as needed for proper planning and environmental reviews.
4. Presentation materials for public meetings to review the plans and gather public input for the project.
5. Attendance at public meetings to assist in presentation of project plans and the gathering of public input.

iii. Optional AE Services (Alternate #1)

Provided the project satisfies all required federal and state environmental reviews and receives federal approval for the use of federal funds to construct the project, RGRTA, at its sole discretion, may enter into negotiations with the firm selected to undertake the work specified above for the purpose of amending its contract with the selected firm to provide additional architectural and engineering services to complete the project, including final design and construction phase services,

SECTION III MINIMUM QUALIFICATIONS

A. Proposer Qualifications

Proposals will be considered from established firms that can demonstrate experience in providing AE services.

B. Minimum Provider Qualifications

The following criteria must be met by the Proposer to be considered a fully responsible bidder in response to this RFP:

- Ability to provide scope of services requested by RGRTA, in the sole judgment of RGRTA.
- Adherence to RFP requirements.

- Demonstrated organizational expertise in the area of AE Services
- Satisfactory references.

SECTION IV: ADMINISTRATIVE PROCEDURES AND PROCUREMENT PROCESS

Submission of Proposals

The proposal submitted by your company will constitute your company's unqualified consent to all terms and conditions, procedures, and requirements outlined herein.

The proposal submitted in response to this invitation will be considered the only submission after the due date. Revised proposals will not be permitted after the proposals are opened, unless RGRTA requests additional or clarifying information. However, prior to the proposal due date, a submitted proposal may be withdrawn by submitting a written request for its withdrawal to the RFP coordinator and signed by the Proposer. Once a proposal is opened, it will be considered a firm and binding proposal, and may not be withdrawn from consideration.

In all cases, no verbal communication shall override written communication from the Authority or the RFP Coordinator. No one is authorized to amend the specifications in any respect by any oral statement or to make any oral representation or interpretation in conflict with the provisions of the specifications.

Proposer representatives shall not contact any RGRTA official or staff member other than the designated RFP Contact Person to explain, amplify, or discuss submitted proposals. All such communications shall be with the RFP Contact Person and must be in writing. For violation of this provision, the Authority shall reserve the right to reject that offeror's proposal. Proposers may continue to communicate with RGRTA staff regarding other business matters relative to RGRTA business.

Contract Term – Proposers should assume a service agreement between RGRTA and the successful proposer for a term from the contract commencement date through project completion. The final contract will be developed by RGRTA.

SECTION V: PROPOSAL SUBMISSION

A. Format and Content of Proposal Submission

Proposal submissions should include information outlined in this section.

1. Firm Information and Personnel (Envelope 1: Technical Proposal)

Provide legal name and address of the firm, as well as a brief summary of the firm's size and structure of its organization, the number of full-time employees and the number of years the firm has been in the business of conducting the described services. Proposers shall submit three (3) references for work similar in nature to this project. Please include

contact information for each reference together with the date and nature of the project undertaken.

The proposal must include detailed information on how the Consultant proposes to staff this project in order to meet RGRTA requirements for the project. This information must include: resumes for all personnel performing work as part of this contract and an outline of all their specific responsibilities under this contract.

2. Program Understanding (Envelope 1: Technical Proposal)

Proposals must demonstrate the Proposing Firm's understanding of the proposed project and the scope of work for AE Services. Proposals must include the following information:

- a. Provide a brief history of the proposing firm and its experience in providing similar services, especially relating to AE work.
- b. Provide a brief description of the firm's qualifications for this project, including a detailed description of the proposing firm's background and capabilities in the relevant areas.
- c. Provide information on those individuals assigned to work on this project with the Authority, including titles and resumes of each staff person proposed to be assigned to this Project.
- d. Describe how your firm will perform the work as contained in Section II of this RFP.
- e. Describe how your personnel, consulting processes, and tools differentiate your firm from your competitors with respect to the work described in this RFP.
- f. Describe how your firm proposes to provide added value to RGRTA.

3. Price (Envelope 2: Pricing Proposal)

Based on the information provided, please provide your fee schedule for the work described in this RFP. RGRTA seeks detail on the number of position(s) per task contained in the RFP Scope of Services, the associated hourly rate for each position, a project budget including each position, number of hours and total not to exceed amount for the project work. The Pricing Proposal shall be submitted in a separate envelope from the Technical Proposal.

REQUIREMENTS

Pricing must be broken down to its lowest determinant. All potential costs that RGRTA could incur as part of this contract shall be fully detailed in all proposals.

SECTION VI: PROPOSAL EVALUATION

RGRTA will employ a structured, competitive evaluation process. All proposals will be reviewed and scored based on how well they address the specific needs of the Authority as outlined in this RFP.

A. Evaluation Points will be determined as follows:

The RGRTA Evaluation Team will review the documentation submitted by each proposer to determine how well the respondent meets the needs of the Authority.

Each evaluation criterion will be given a point value which indicates its importance to the Authority. The evaluators may award all the points, none of the points, or some of the points, depending upon how the evaluator rates the respondent for the item in question.

Since it is not possible to totally specify all of the Authority's requirements in this RFP, it is possible that further discussion may take place. RGRTA may choose to use competitive negotiations to develop the final contract with the firm whose proposal best suits the needs of RGRTA, based upon the sole discretion of RGRTA. Therefore, a preferred proposer, based on the evaluation referenced above, may be awarded the right to negotiate those requirements with the Authority. If the preferred proposer and the Authority are unable to reach agreement, the Authority reserves the right, but not the obligation, to negotiate with the next lowest responsible proposer.

B. Evaluation Criteria (listed below in descending order of importance):

1. Firm Qualifications and Response to RFP

- a. Qualifications and experience of the firm

2. Qualifications and Experience of Staff Assigned to the Project

- a. Qualifications of staff assigned to service the Authority
- b. Availability of staff to Authority and ability to meet project schedule

3. Ability to Provide the Services Contained in This RFP

- a. Proposed work plan strategies
- b. Ability to provide requested services

C. Pricing

This is a Brooks Act procurement whereby the Owner will negotiate with the highest ranked Consultant on the project fee. Negotiations may be formally terminated if they fail to result in a

contract within a reasonable time period. Negotiations will then ensue with the second ranked Consultant, and if necessary, the third ranked Consultant. Proposers should assume a service agreement between RGRTA and the successful proposer for a term from the contract commencement date through project completion. The final contract will be developed by RGRTA.

SAMPLE AGREEMENT

College Town Satellite Transit Center

The undersigned, TBD , (the "Contractor"), agrees to furnish and deliver to the ROCHESTER GENESEE REGIONAL TRANSPORTATION AUTHORITY (the "Owner") a New York public benefit corporation, with its principal place of business located at 1372 East Main Street, Rochester, New York 14609, certain AE Services for the College Town Satellite Transit Center Project, (the "services") as further set forth herein.

WHEREAS, pursuant to the terms and conditions contained in Owner's "Request for Proposals for College Town Satellite Transit Center Project" dated February 7, 2011 (the "Request for Proposals"), and Contractor's proposal in response thereto (the "Contractor Proposal"), Owner desires to retain Contractor to provide AE Services, and Contractor desires to provide such services, in accordance with the provisions contained in this Agreement ("Agreement");

WHEREAS, the Contractor desires to provide such services in accordance with the provisions contained in this Agreement for a period of commencing on date of contract execution through project completion;

NOW, THEREFORE, in consideration of the premises set forth above and the mutual covenants and agreements contained herein, as well as for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. SCOPE OF AGREEMENT

The Owner hereby retains the Contractor as an independent contractor to provide the services, set forth in this Agreement, including as described in the Owner's "Request for Proposals" dated February 7, 2011, a copy of which is by this reference incorporated into and made a part hereof, and Contractor hereby agrees to provide said services in such capacity. Contractor agrees to perform any other work that, although not specifically described herein, is incidental to, or necessary for, the provision of such services, and Contractor hereby agrees to perform said work in such capacity. The services include the services described in the Schedules to this Agreement that are referenced in Section 23 of this Agreement, and, by this reference, made a part hereof. Nothing herein shall prevent Owner from contracting with, or employing, additional firms to provide such services to Owner or any of its subsidiaries during the term of this Agreement.

2. DUTIES OF THE CONTRACTOR

The Contractor hereby agrees to provide the services in accordance with the terms hereof for a period commencing **at the date of contract execution by both Contractor and Owner through project completion.** The Contractor hereby agrees to furnish the desired Services in accordance with the terms set forth herein, including, without limitation, the terms set forth in the Contractor Proposal.

The Contractor represents that the Services will be provided in accordance with the requirements of the Request for Proposals for "College Town Satellite Transit Center" issued by Owner (referred to herein as the "Request for Proposals") and the specifications set forth in the Contractor Proposal. Upon notice from the Owner pursuant to the provisions of this Agreement, the Contractor will replace any delivered products or correct any services not meeting the foregoing specifications, at no additional cost to the Owner.

Contractor shall provide the desired Services in accordance with the terms and provisions of this Agreement, and subject to the additional terms set forth and attached hereto and, by this reference, made a part hereof.

Contractor and its employees shall cooperate with the Owner's personnel who are directing, supervising, or monitoring the Services provided by the Contractor.

3. COMPENSATION

Subject to the terms of this Agreement, the price for the services as contained in Contractor's proposal contained in this agreement.

- a. Billing and Collection. The Contractor shall forward a written invoice to the Owner monthly, for provision of services for the immediately preceding month, and all amounts due and owing hereunder for such month shall be paid by the Owner in accordance with Section 3(b) hereof.
- b. Owner's Prompt Payment Procedures. The Owner will make payment on a properly submitted invoice within thirty (30) days (excluding legal holidays) of Owner's receipt thereof. Interest will be paid when prompt payment is not made, such interest to accrue to the Contractor at the same rate Owner is then receiving on its investable funds.
 - i. Extension of Payments. The following conditions may reasonably justify extension of the date by which payment must be made:
 - A. If required by specific statutory provisions, payment must be preceded by an inspection period or by an audit to determine the resources applied or used by the Contractor in fulfilling the terms of this Agreement; or
 - B. The date by which the payment must be made is modified in accordance with the following section (ii).

- ii. Defects. The Owner shall have fifteen (15) calendar days after receipt of an invoice at its designated payment office to notify the Contractor of:

- A. Defects in the delivered services;
- B. Defects in the invoice; or
- C. Suspected improprieties of any kind;

The existence of such defects shall prevent the commencement of the time period for computing interest. In the event the Owner fails to notify the Contractor of such defects within fifteen (15) calendar days of receiving the invoice, the number of days allowed for payment of a properly corrected invoice will be reduced by the number of days between the fifteenth (15th) day and the day that notification of said defect was actually transmitted to the Contractor. If the Owner, in such situations, fails to provide reasonable grounds for its contention that a defect exists, the date by which the payment must be made for the Owner not to become liable for interest payments shall be calculated from the date of receipt of an invoice.

- iii. Inapplicability. These procedures shall not apply to payments due and owing by the Owner in situations where the Owner exercises a legally authorized set-off against all or part of the payment due to the Contractor.

- c. No Other Payments. Contractor agrees that all services and materials to be provided as set forth in the Exhibits and as otherwise required under this Agreement shall be provided for the foregoing compensation, and that Contractor shall not be entitled to any other payment in connection with its performance of the Services.

4. **GUARANTEE**

Contractor hereby guarantees to supply the services as described herein during the term of this Agreement and in accordance with its terms.

5. **RELATIONSHIP OF PARTIES**

The Contractor hereby acknowledges and agrees that, for purposes of this Agreement, the Contractor is, and shall in all respects, be considered an independent contractor. Nothing in this Agreement shall be construed to constitute the Contractor, or any of its employees, officer, directors, agents or representatives, as an employee or agent of the Owner, nor shall the Contractor have any authority to bind the Owner in any respect, it being intended that the Contractor shall remain an independent contractor responsible for its own actions. The Contractor is not entitled to any of the benefits provided by the Owner to its employees, including, but not limited to, workers' compensation coverage, unemployment insurance, group health or life insurance and pension benefits. The

Contractor hereby acknowledges and agrees that it will be responsible for its own federal, state and local withholding and income taxes.

The Contractor shall have the direct and sole responsibility for the following: payment of wages and other compensation, reimbursement of the Contractor's employees' expenses, compliance with Social Security, unemployment and other insurance or other statutory withholding requirements, and all obligations imposed on the employer of personnel. The Owner shall have no responsibility for any of the incidences of employment.

Contractor and its employees agree not to hold themselves out as employees or agents or employees of RTS, Inc. by reason of their participation under this Agreement.

Contractor shall not engage, either on a full-time or part-time basis during the term of this Agreement, any professional or technical personnel who are, or have been at any time during the term of this Agreement, in the employ of RTS, Inc., except regularly retired employees, without the consent of RTS, Inc.

6. EXECUTORY NATURE OF CONTRACT

This Agreement shall be deemed executory only to the extent of the funding available and Owner shall not incur any liability beyond the funds annually budgeted therefore. The Owner may make reductions in this Agreement for losses/reductions in its sources of revenue. If this occurs, the Contractor's obligations regarding the services or product provided under this Agreement may be reduced correspondingly.

7. INTEREST OF MEMBERS OF OR DELEGATES TO CONGRESS

No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

8 PROHIBITED INTEREST

No member, officer or employee of the Owner, during his tenure or for a period of one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds hereof.

9. DISADVANTAGED BUSINESS ENTERPRISE

In connection with the performance of this Agreement, Contractor will cooperate with the Owner to use its best efforts to ensure that Disadvantaged Business Enterprises shall have the maximum practicable opportunity to compete for subcontract work under this Agreement.

10. TERMINATION FOR CONVENIENCE

Owner retains the right to cancel this contract at any time, in whole or in part, without reason. This provision should not be understood as waiving Owner's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision.

11. TERMINATION FOR DEFAULT

- a. If either party fails to perform its material obligations under this Agreement, otherwise defaults hereunder as set forth in Section 12 below, the non-breaching party may, by written notice to the breaching party, terminate this Agreement in whole or in part and/or pursue any and all remedies that it may have under applicable law, provided that such breach is not cured within fifteen (15) days after the breaching party's receipt of notice from the non-breaching party identifying such default.
- b. No failure on the part of either party to exercise any rights under this Agreement, and no course of dealing with respect to any right hereunder, shall operate as a waiver of such right, nor shall any single or partial exercise of any right preclude the exercise of any other right.
- d. The remedies herein provided are cumulative and are not exclusive of any other remedies provided by law and are in addition to, and not in lieu of, any other rights and remedies available under this Agreement or provided by law.

12. DEFAULT

The following shall be events of default under this Agreement:

- a. Failure by either party to perform any or all of its material obligations in accordance with the terms of this Agreement;
- b. Any representation or warranty made by Contractor in its bid response or this Agreement proves to have been false or misleading in any material respect; or
- c. Failure by either party to observe and perform any material covenant, condition or agreement on its part to be observed or performed under this Agreement, unless the other party shall agree in writing to an extension of such time to perform prior to its expiration.

13. CONTRACTOR RESPONSIBILITY/INDEMNIFICATION

- a.. Contractor agrees to protect, defend, indemnify and hold free and harmless all federal, state, and county agencies concerned and Owner, its directors, officers, and employees, agents, and representatives from and against any and all claims, lawsuits, losses, penalties, damages, expenses, settlements, costs, charges and liabilities of every kind and nature, including, without limitation, court costs and reasonable attorneys' fees and expenses arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind and character, including injury to person or property of whatsoever kind and nature arising directly or indirectly out of the carelessness, negligence, or wrongful or fraudulent conduct of the Contractor or any servant, agent, or employee of Contractor. The indemnification obligation set forth in this Section 13(a) shall

not apply to any claims, lawsuits, losses, penalties, damages, expenses, settlements, costs, charges or liabilities of any kind which are attributable directly or indirectly to the negligence or wrongful conduct of Owner.

- b. Owner agrees to protect, defend, indemnify and hold free and harmless Contractor, its parent, subsidiaries and affiliates, and their respective directors, officers, and employees, agents, and representatives from and against any and all claims, lawsuits, losses, penalties, damages, expenses, settlements, costs, charges and liabilities of every kind and nature, including, without limitation, court costs and reasonable attorneys' fees and expenses arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind and character, including injury to person or property of whatsoever kind and nature arising directly or indirectly out of the carelessness, negligence, or wrongful or fraudulent conduct of Owner or any servant, agent, or employee of Owner. The indemnification obligation set forth in this Section

13 (b) shall not apply to any claims, lawsuits, losses, penalties, damages, expenses, settlements, costs, charges or liabilities of any kind which are attributable directly or indirectly to the negligence or wrongful conduct of Contractor.

14. INSURANCE REQUIREMENTS

- a. Prior to commencing work, Contractor shall provide, at its own cost and expense, the following insurance with insurance companies licensed in the State of New York and reasonably acceptable to the Owner, to be evidenced by certificates, or Contractor shall may self-insure for such coverages, as the case may be. In no way should the Contractor construe these minimum required limits to be their limit of liability to the Authority.
- b. Each certificate shall require that, at least thirty (30) days prior to the cancellation of or a material change in such policy, written notice thereof shall be given to the Owner for all of the following stated insurance policies. *All such notices shall name the Contractor, identify this Agreement, and list the Owner as an "Additional Insured."* Said insurance must cover all operations under this Agreement whether performed by Contractor.
- c. Said certificates shall be delivered, prior to contract execution, to:

**David Dadetta
RGRTA/RTS
1372 E. Main Street
Rochester, NY 14609**

- (1) **Workers' Compensation:** Statutory coverage, in compliance with the Compensation Law of the State of New York.

(2) **Comprehensive General Liability Insurance** with minimum limits of:

- A. \$1,000,000 Each Occurrence;
- B. \$1,000,000 Personal and Advertising Injury;
- C. \$2,000,000 General Aggregate; and
- D. \$2,000,000 Products/Completed Operations Aggregate.

These limits shall provide coverage for:

- | | | | |
|-----|---------------------|-----|-------------------------------|
| {X} | Premises/Operations | {X} | Products/Completed Operations |
| {X} | Personal Injury | {X} | Additional Insured* |

The Owner shall be named as an “Additional Insured” on this policy. The proper name is: Rochester-Genesee Regional Transportation Authority and its subsidiaries, Regional Transit Service and all officers, employees and agents of such.

(3) If automobiles are to be used in the performance of any work under this Agreement, **Automobile Liability Insurance** with the following minimum limits of liability per occurrence:

- A. \$1,000,000 per occurrence, for bodily injury, and
- B. \$1,000,000 for property damage, unless otherwise indicated in a “Special Conditions” of the contract specifications.
- C. \$5,000,000 commercial umbrella, \$5,000,000 per occurrence and \$5,000,000 aggregate

This insurance shall include for bodily injury and property the following coverage:

- A. Owned automobiles;
- B. Hired automobiles; and
- D. Non-owned automobiles.

(4) Professional E & O- \$1,000,000 occ/aggregate

c. All policies and Certificates of Insurance shall be approved by the Owner prior to the inception of any work.

- 1. Upon failure of the Contractor to furnish, deliver and maintain such insurance as above provided, this Agreement, at the election of the Owner, may be forthwith declared suspended, discontinued or terminated upon ten (10) days written notice. Failure of the Contractor to take out and/or maintain, or the taking out and/or maintenance of any required insurance, shall not relieve the Contractor from any liability under this Agreement, nor shall the insurance

requirements be construed to conflict with or otherwise limit the obligations of the Contractor concerning indemnification.

2. If any of the Property and Casualty Insurance requirements are not complied with at their renewal dates, payments to the Contractor will be withheld until those requirements have been met, or at the option of Owner, Owner may pay the Renewal Premium and withhold such payments from any monies due the Contractor.

3. Contractor also agrees that:

- (i) Insurers shall have no right of recovery or subrogation against the Owner (including its agents and agencies as aforesaid), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance;
- (ii) The insurance companies issuing the policy or policies shall have no recourse against the Owner (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form or policy; and
- (iii) Any and all deductibles in the above-described insurance policies shall be assumed by, for the account of, and at the sole risk of the Contractor.

15. MISCELLANEOUS PROVISIONS

- a. Governing Law. This Agreement shall be governed by, interpreted, construed and enforced in accordance with the substantive laws of the State of New York, and venue shall be in the County of Monroe, Rochester, New York.
- b. Severability. If any provision of this Agreement shall be or become invalid under any provision of federal, state or local law, such invalidity shall not affect the validity or enforceability of any other provision hereof.
- c. Assignment. Contractor shall not, in whole or in part, assign, transfer, convey, sublet, mortgage, pledge, hypothecate, grant any security interest in, or otherwise dispose of this Agreement, or any part thereof to any unaffiliated third party, person or entity without the prior written consent of the Owner, which consent shall not be unreasonably withheld; and any account to do so without such consent shall be void.
- d. Waiver. The waiver of a breach of any provision of this Agreement by any party shall not operate or be construed as a waiver of any subsequent breach.

- e. Force Majeure. Neither party shall be liable for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, government restrictions, wars, insurrections and/or any other cause beyond the control of the party whose performance is affected.
- f. Notices. Unless otherwise specified, notices permitted or required to be given by either party to the other under this Agreement shall be in writing and shall be deemed to have been properly served and duly given (i) if sent by U.S. First Class Mail, postage prepaid, five (5) business days after being sent, (ii) if sent vial electronic mail (“e-mail”), two days after being sent, or (iii) when actually delivered (with confirmed written receipt) if delivered personally, by facsimile, by courier, or by nationally recognized overnight courier, in each case to the recipient at its address or facsimile telephone number as stated on the signature page of this Agreement, or as changed pursuant to a notice served as prescribed in this Subsection (e).
- g. Inspections and Audit: Designated representatives of the Owner shall have the right, on not less than five business days prior written notice, to monitor the provision of the Product under this Agreement which includes access at reasonable times and places to the Contractor’s employees, reports, books, records, audits and any other material relating to the delivery of such services during Contractor’s customary business hours. The Contractor shall permit the Owner to inspect all work, materials, payroll, invoices and other data and records relating to the provision of the services. Owner shall use all reasonable efforts to avoid interference with the Contractor’s provision of the services. The obligations of the Contractor under this Subsection (h) shall survive the termination of this Agreement.
- h. Maintenance of Records: The Contractor shall maintain all books, documents, papers, accounting, records and other evidence pertaining to costs incurred by the Contractor in connection with its provision of the services and make such materials available for inspection by authorized representatives of the Owner at the Contractor’s office, at all reasonable times during the term of this Agreement and for six (6) years from the date of receipt by the Contractor of all final payments. The Contractor shall provide copies of such materials to the Owner upon request, at Owner’s expense.
- i. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- j. Each party acknowledges that it has read and understands this Agreement and the attached Schedule(s), and further agrees that it is the complete and exclusive statement of the agreement between the parties which supersedes and merges all prior proposals, understandings, and all other agreements, oral and written,

between the parties relating to the subject matter of this Agreement. This Agreement may not be modified or altered except by written instrument duly executed by both parties.

- k. Both parties hereto warrant and represent that they have full right, power and authority to execute this Contract.
- l. This Agreement may not be changed except in a writing signed by both parties.

16. LAWS & REGULATIONS

Contractor shall comply with all applicable Federal, State and local laws and regulations including, without limitation, those relating to wages, hours, fair employment practices, equal opportunity, anti-discrimination, safety and working conditions. Each and every provision of law and clause required by applicable laws with reference to the Services, shall upon written acknowledgment of the two parties hereto, be inserted herein, and if, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then upon the application of either party, and upon written acknowledgment of the two parties hereto, this Agreement shall forthwith be physically amended to make such insertion.

17. CONFLICTING PROVISIONS

The various documents that comprise this Agreement shall prevail in accordance with the precedence established below in the event of any inconsistencies among them:

- 1. Federal Clauses
- 2. Standard Clauses for NYS Contracts
- 3. Agreement
- 4. Contractor Proposal
- 5. Request for Proposals

18. DELIVERY FAILURE

Failure of Contractor to deliver the services within the time specified by Owner, or within reasonable time as interpreted by Owner, shall constitute authority for Owner, in addition to any other rights it may have, to purchase in the open market antifreeze of comparable grade to replace the Product not delivered. On all such purchases, the Contractor shall reimburse Owner within a reasonable time specified by the Owner, for any expense incurred in excess of contract prices or the Owner shall have the right to deduct such amount from monies owed the defaulting Contractor.

19. CODE OF ETHICS

Contractor agrees that this Agreement may be terminated if any work under this Agreement is in conflict with the provisions of Section 74 of the New York State Public Officers' Law, as amended from time to time, which establishes a Code of Ethics for New York State officers and employees.

20. PERSONS OR ORGANIZATIONS EMPLOYED TO INFLUENCE THIS PROCUREMENT

- a. Contractor warrants and represents that the information set forth on Exhibit A hereto is complete, true and accurate with respect to any person or organization that the Contractor has retained, employed or designated to influence the procurement under this Agreement.
- b. Contractor further warrants and represents that Contractor has not been found non-responsible during the past five years in the connection with disclosure of information about persons or organizations attempting to influence procurements.
- c. Contractor shall notify RGRTA any time a person or organization, other than the ones named in Exhibit A, is retained, employed or designated by Contractor to influence this procurement and shall provide the information described Exhibit A for any such person or organization.
- d. Contractor acknowledges that RGRTA may terminate this Agreement if the Owner discovers that the Contractor intentionally failed to provide true and complete information with respect to all persons employed, retained, or designated by the Contractor to influence this procurement.
- e. Contractor warrants and represents that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, RGRTA shall have the right to annul this Agreement without liability, or, in its discretion, to deduct from the compensation to be paid Contractor hereunder, or otherwise recover the full amount of any such percentage, brokerage fee, gift or contingent fee.

21. QUALIFICATIONS AND LICENSES

Contractor represents and warrants to the Owner that it and its employees are duly and fully qualified under the laws of the state of its incorporation and of the State of New York, to undertake the activities and obligations set forth in this Agreement, that it possesses as of the date of its execution of this Agreement, and it will maintain throughout the term hereof, all necessary approvals, consents and licenses from all applicable government agencies and authority and that it has taken and secured all necessary board of directors and shareholders action and approval.

22. THE CONTRACTOR FURTHER AGREES TO:

- a. Attached Schedule I – Non-Discrimination Provisions.
- b. Attached Schedule II – Waiver of Immunity Provisions.
- c. Attached Schedule III – Workers' Compensation Law.

- d. Attached Schedule IV – New York State Required Contract Clauses
- e. Attached Schedule V – Federal Required Contract Clauses
- f. Attached Schedule VI – Request for Proposals dated February 7, 2011
- g. Attached Schedule VII –Contractor Proposal dated TBD
- h. Exhibit A- Required Forms

IN WITNESS WHEREOF, the parties hereto have signed and delivered this Agreement as of this ____ day of _____, 2011:

[Signatures Appear on the Following Page]

Rochester Genesee Regional Transportation Authority

BY _____

TITLE: _____ Chief Executive Officer

ADDRESS: _____ Regional Transit Service, Inc.

_____ 1372 East Main Street

_____ Rochester, New York 14609 FACSIMILE NO.: _____ (585) 654-0224

STATE OF NEW YORK)

) ss.:

COUNTY OF MONROE)

On the ____ day of _____, in the year 2011, before me, the undersigned, Mark R. Aesch, personally appeared, personally known to me, or proved to me on the basis of satisfactory evidence to be, the individual whose name subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

BY: _____

TITLE: _____

ADDRESS: _____

_____ TELEPHONE NO. _____

_____ FACSIMILE NO.: _____

STATE OF NEW YORK)

) ss.:

COUNTY OF MONROE)

On the _____ day of _____, in the year 2011, before me, the undersigned,
_____ personally appeared, personally known to me, or proved to
me on the basis of satisfactory evidence to be, the individual whose name subscribed to the
within instrument and acknowledged to me that she executed the same in her capacity, and that
by her signature on the instrument, the individual, or the person upon behalf of which the
individual acted, executed the instrument.

Notary Public

U. S. DEPARTMENT OF TRANSPORTATION REQUIRED CLAUSES

1. Fly America Requirements - The contractor shall comply with 49 USC 40118 (the “Fly America” Act) in accordance with General Services Administration regulations 41 CFR 301-10, which state 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. The 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. The contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

2. Buy America Requirements - The contractor agrees to comply with 49 USC 5323(j) and 49 CFR 661, which state that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the US for 15 passenger vans and 15 passenger wagons produced by Chrysler Corp., software, microcomputer equipment and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 60% domestic content.

A bidder or offeror must submit the appropriate Buy America certification to RGRTA with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

3a. Charter Service Operations - The contractor shall comply with 49 USC 5323(d) and 49 CFR 604, which state that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under these exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

3b. School Bus Operations - Pursuant to 49 USC 5323(f) and 49 CFR 605, recipients and subrecipients of FTA assistance shall not engage in school bus operations exclusively for the 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.

4. Cargo Preference - Use of US-Flag Vessels - The contractor shall: a. use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels; b. furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each

shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to RGRTA (through the contractor in the case of a subcontractor's bill-of-lading.) c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material, or commodities by ocean vessel.

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

6. Energy Conservation - The 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.

7. Clean Water - The 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.* The contractor shall report each violation to RGRTA and understands and agrees that RGRTA will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. The contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

8. Bus Testing - The contractor [manufacturer] shall comply with 49 USC A5323(c) and FTA's implementing regulation 49 CFR 665 and shall perform the following:

1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient prior to the recipient's final acceptance of the first vehicle.

2) A manufacturer who releases a report under para. 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the US before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

9. Pre-Award & Post-Delivery Audit Requirements - The contractor shall comply with 49 USC 5323(l) and FTA's implementing regulation 49 CFR 663 and submit the following certifications:

(1) Buy America Requirements: The contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the contractor certifies compliance with Buy America, it shall submit documentation listing 1) component and subcomponent parts of the rolling stock

to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) Solicitation Specification Requirements: The contractor shall submit evidence that it will be capable of meeting the bid specifications.

(3) Federal Motor Vehicle Safety Standards (FMVSS): The contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the buses will not be subject to FMVSS regulations.

10. Anti-Lobbying Amendment, 31 USC 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 [to be codified at 2 USC 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal 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 USC 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 the Federal contract, grant or award covered by 31 USC 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award 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 funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 CFR 1413 (1/19/96). (PL 104-65, to be codified at 2 USC 1601, et seq.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submittal of this certification is a prerequisite for making or entering into this

transaction imposed by 31 USC 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person failing to file the required certification shall be subject to a civil penalty of no less than \$10,000 and no more than \$100,000 for each such failure.

[Note: Pursuant to 31 USC 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

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

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

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

12. Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (8) October, 2001) between RGRTA 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.

13. Bonding Requirements

Bid Security Requirements – A Bid Security shall be issued by a qualified surety company acceptable to RGRTA and listed as a company currently authorized under 31 CFR 223 as possessing a Certificate of Authority as described hereunder. In submitting a proposal, the proposer agrees and understands that RGRTA reserves the right to reject any and all proposals, or part of any proposal, and it is agreed that the proposal may not be withdrawn for a period designated by RGRTA subsequent to the due date, without RGRTA's written consent. Should the proposer withdraw the proposal without RGRTA's consent, or refuse or be unable to enter into a contract, or refuse or be unable to furnish adequate and acceptable Performance Bonds or Labor & Material Payment Bonds or insurance, it shall forfeit the bid security to the extent of RGRTA's damages occasioned by such withdrawal or refusal or inability to enter into an agreement or provide adequate security therefore. To the extent the defaulting proposer's surety shall prove inadequate to fully recompense RGRTA for the damages occasioned by default, the proposer shall indemnify RGRTA and pay to RGRTA the difference between the bid security and RGRTA's total damages.

Performance & Payment Bonding Requirements (Construction) – The contractor shall be required to obtain Performance and Payment Bonds as follows: The penal amount shall be 100% of the original contract price unless RGRTA determines that a lesser amount is adequate for RGRTA's protection. RGRTA shall require additional protection if the contract price is increased. The increase in protection shall equal 100% of the contract price increase.

Performance & Payment Bonding Requirements (Non-Construction) - The contractor is required to obtain performance and payment bonds when necessary to protect RGRTA's interest.

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

1. RGRTA property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and RGRTA, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the contractor shall be required to obtain performance bonds as follows: The penal amount of performance bonds shall be 100% of the original contract price unless RGRTA determines that a lesser amount is adequate for RGRTA's protection. RGRTA shall require additional protection if the contract price is increased. The increase in protection shall equal 100% of the contract price increase.

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

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

1. The penal amount of payment bonds shall equal:

(i) 50% of the contract price if the contract price is not more than \$1 million;

(ii) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(iii) \$2.5 million if the contract price is increased.

14. Clean Air - (1) The contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 *et seq.* The contractor shall report each violation to RGRTA and understands and agrees that RGRTA will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. The contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

15. Recovered Materials - The contractor shall comply with all requirements of Sec. 6002 of the Resource Conservation and Recovery Act, as amended (42 USC 6962, including the regulatory provisions of 40 CFR 247, and Executive Order 12873, as applied to the procurement of items designated in 40 CFR 247(b).

16. Davis-Bacon Act

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

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

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

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

(2) The classification is utilized in the area by the construction industry; and

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

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

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

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

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

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

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

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

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

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

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

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

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

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

(3) **Payrolls and Basic Records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the US 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 USDOL has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) For each week in which any contract work is performed, the contractor shall submit a copy of all weekly payrolls to RGRTA. The payrolls submitted shall set out accurately and completely all information required under 29 CFR 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Supt. of Documents (Federal Stock Number 029-005-00014-1), US Govt. Printing Office, Washington, DC 20402. The prime contractor is responsible for the submittal of copies of payrolls by all subcontractors.

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

(1) That the payroll for the payroll period contains all information required under 29 CFR 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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

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

(iii) The contractor or subcontractor shall make the records required under para. (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of FTA or USDOL, and shall permit such representatives to interview employees during working hours on the job. If a contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment pursuant to 29 CFR 5.12.

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

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the USDOL, Employment & Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment & Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage & Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment & Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment & Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

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

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

(iii) The penalty for making false statements is prescribed in 18 USC 1001.

17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 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 the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the US 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 - RGRTA shall upon its own action or upon written request of an authorized representative of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in para. (2) of this section.

(4) Subcontracts - The 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. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

(Section 102 nonconstruction contracts should also have the following provision:)

(5) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the US 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 USDOL has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

Section 107 (OSHA): (This section is applicable to construction contracts only)

Contract Work Hours and Safety Standards Act - (i) The contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 USC section 333, and applicable USDOL regulations, " Safety and Health Regulations for Construction " 29 CFR 1926. Among other things, the contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(ii) Subcontracts - The contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair.

A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

18. Compliance with Copeland Act Requirements - The contractor shall comply with the requirements of 29 CFR 3, which are incorporated by reference in this contract.

19. No Obligation by the Federal Government -

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

(2) The contractor agrees to include the above clause in each subcontract financed in whole or in part with 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.

20. Program Fraud and False or Fraudulent Statements or Related Acts -

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

(2) If the contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the Federal 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 the Contractor, to the extent the Federal Government deems appropriate.

(3) The 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.

21. Termination

a. Termination for Convenience (General Provision) RGRTA may terminate this contract, in whole or in part, at any time by written notice to the contractor when it is in the Government's best interest. The contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to

the time of termination. The contractor shall promptly submit its termination claim to grantee to be paid the Contractor. If the contractor has any RGRTA property in its possession, the contractor will account for the same, and dispose of it in the manner RGRTA directs.

b. Termination for Default [Breach or Cause] (General Provision) If the contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the contractor fails to perform in the manner called for in the contract, or if the contractor fails to comply with any other provisions of the contract, RGRTA may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the contractor is in default. The contractor 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 the contract.

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

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

If contractor fails to remedy to grantee'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 grantee setting forth the nature of said breach or default, grantee shall have the right to terminate the Contract without any further obligation to the contractor. Any such termination for default shall not in any way operate to preclude grantee 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 grantee elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by grantee shall not limit grantee's 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) RGRTA, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

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

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

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

If this contract is terminated while the contractor has possession of Recipient goods, the contractor shall, upon direction of RGRTA, protect and preserve the goods until surrendered to the Recipient or its agent. The contractor and grantee 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 the contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of RGRTA.

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

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

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: 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. the contractor, within [10] days from the beginning of any delay, notifies RGRTA in writing of the causes of delay. If in the judgment of RGRTA, the delay is excusable, the time for completing the work shall be extended. The judgment of RGRTA shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

i. Termination for Convenience or Default (Architect & Engineering) RGRTA may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the contractor to fulfill the contract obligations. RGRTA shall terminate by delivering to the contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates,

summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

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

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

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

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

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

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

22.Certification Regarding Debarment, Suspension, and Other Responsibility Matters

Lower Tier Covered Transactions (Third Party Contracts over \$100,000).

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the signed certification as set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, grantee may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to grantee if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR 29].

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by grantee.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by US General Service Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under Para. 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, grantee may pursue available remedies including suspension and/or debarment.

"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction"

(1) The prospective lower tier participant certifies, by submittal of this proposal, that neither it nor its "principals" [as defined at 49 CFR 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

23. Contracts Involving Federal Privacy Act Requirements - 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 shall comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 USC 552a. Among other things, the contractor shall 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 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 FTA assistance.

24. Civil Rights - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 USC 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 USC 6102, section 202 of the Americans with Disabilities Act (ADA) of 1990, 42 USC 12132, and 49 USC 5332, the contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. The contractor shall also comply with applicable Federal implementing regulations and other requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 USC 2000e, and 49 USC 5332, the contractor shall comply with all applicable equal employment opportunity requirements of USDOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, USDOL," 41 CFR 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 USC 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the project. The contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with Sec. 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC 623 and 49 USC 5332, the contractor shall refrain from discrimination against present and prospective employees for reason of age. The contractor shall also comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with Sec. 102 of the Americans with Disabilities Act (ADA), as amended, 42 USC 12112, the contractor shall comply with the requirements of US Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR 1630, pertaining to employment of persons with disabilities. The contractor shall also comply with any implementing requirements FTA may issue.

(3) The contractor shall include these requirements in each subcontract financed in whole or in part with FTA assistance, modified only if necessary to identify the affected parties.

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

Performance During Dispute - Unless otherwise directed by RGRTA, the 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 a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between RGRTA 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 New York State.

Rights and Remedies - 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 RGRTA 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 hereunder, except as may be specifically agreed in writing.

26. Patent and Rights Data

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

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

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

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

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

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
2. Any rights of copyright purchased by the purchaser or contractor using FTA assistance in whole or in part.

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

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

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

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

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

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in US Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR 401.

(4) The contractor shall include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with FTA assistance.

B. Patent Rights - These requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the US or any foreign country, RGRTA and the contractor shall provide immediate notice and a detailed report to the FTA.

(2) Unless the US Government later makes a contrary determination in writing, irrespective of the contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the purchaser and the contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the US Government as described in US Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts & Cooperative Agreements," 37 CFR 401.

(3) The contractor shall include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with FTA assistance.

27. Transit Employee Protective Provisions. (1) The contractor shall comply with applicable transit employee protective requirements as follows:

(a) 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 USDOL to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 USC A 5333(b), and USDOL guidelines at 29 CFR 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from USDOL to FTA applicable to RGRTA's project from which FTA 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 USDOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with FTA assistance either for projects for elderly individuals and individuals with disabilities authorized by 49 USC 5310(a)(2), or for projects for nonurbanized areas authorized by 49 USC 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 USC 5310(a)(2) for Elderly Individuals & Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 USC 5310(a)(2), and if USDOT has determined or determines in the future that the employee protective requirements of 49 USC 5333(b) are necessary or

appropriate for the state and the public body subrecipient 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 USDOL to meet the requirements of 49 USC 5333(b), USDOL guidelines at 29 CFR 215, and any amendments thereto. These terms and conditions are identified in the USDOL's letter of certification to FTA, the date of which is set forth in the Grant Agreement or Cooperative Agreement with the state. The contractor shall perform transit operations in connection with the underlying contract in compliance with the conditions stated in that USDOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 USC 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with FTA assistance authorized by 49 USC 5311, the contractor shall comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the USDOT and USDOL, dated May 31, 1979, and the procedures implemented by USDOL or any revision thereto. The contractor shall also include any applicable requirements in each subcontract involving transit operations financed in whole or in part with FTA assistance.

28. Disadvantaged Business Enterprise (DBE) 49 CFR 26 - The contractor, subgrantee or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any contract or subagreement supported with federal assistance derived from USDOT or in the administration of its DBE program or the requirements of 49 CFR 26. Failure of the contractor or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of the contract or other such remedy as deemed appropriate. The contractor shall take all necessary and reasonable steps under 49 CFR 26 to ensure nondiscrimination in the award and performance of any contract or subagreement supported with USDOT assistance.

29. State & Local Law Disclaimer - The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on State law, and that before the suggested clauses are used in the contractor's procurement documents, the contractor should consult its attorney.

30. Incorporation of FTA Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1E, dated June 19, 2003, 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 RGRTA to be in violation of FTA terms and conditions.

31. Drug & Alcohol Testing - RGRTA shall establish and implement a drug and alcohol testing program complying with 49 CFR 653 & 654, produce any documentation necessary to establish its compliance with 49 CFR 653 & 654, and permit any authorized representative of USDOT or its operating administrations, or the State of New York, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR 653 and 654 and review the testing process. RGRTA further agrees to annually certify compliance with 49 CFR 653 and 654 and to submit the Management Information System (MIS) reports. To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for FTA Grants and Cooperative Agreements," published annually in the Federal Register.

32. 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.

33. Conformance with ITS National Architecture – The contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture in compliance with Section 5206(e) of TEA-21, 23 USC 502 note, and with FHWA/FTA’s “Transportation Equity Act for the 21st Century; Interim Guidance on Conformity with the National Intelligent Transportation Systems (ITS) Architecture and Standards” 63 Federal Register 70443 *et seq.* December 21, 1998, and other subsequent Federal directives that may be issued.

34. Access Requirements for Persons with Disabilities – The contractor shall comply with the requirements of 49 USC 5301(d) which states the Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation service and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act of 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.

35. 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, the 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.

36. 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.

37. Equal Employment Opportunity (EEO) & Fair Employment Practices - During the performance of this contract, the contractor agrees as follows:

The contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, age, marital status, disability, sex, or national origin. The contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, age, marital status, disability, 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 training, including apprenticeship. The contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

The contractor shall comply with Executive Order 11246, and unless otherwise exempt under the rules, regulations, subject to EEO requirements as set forth in FPR 1-12.803.2, said clause being herewith incorporated into this contract by reference. In support of RGRTA’s EEO Contract Compliance Requirements, all proposals shall be accompanied by the following executed documents.

- (1) Affidavit of Non-Discrimination
- (2) Employer Information Report (EEO-1)
- (3) Bidder/Proposer Policy Statement on Equal Employment
- (4) Affirmative Action Questionnaire

The contractor for itself, its assignees and successors in interest agrees as follows:

Compliance Requirements - **The contractor shall comply with the Regulations relative to non-discrimination in Federally-assisted programs of the USDOT, 49 CFR 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.**

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

- (1) The contractor shall, in all solicitations or advertisements for employees placed by, or on behalf of, the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, age, marital status, disability, sex, or national origin.
- (2) The contractor shall send to each labor union or representative or workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (3) The contractor shall furnish all information and reports required by Executive Order 11246, and by rules, regulations, and orders of the USDOL for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (4) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for further federally-assisted contracts in accordance with procedures authorized in Executive Order 11246, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, or by USDOL rule, regulations, or order, or as otherwise provided by law.
- (5) The contractor shall include the portion of the sentence immediately preceding para. (1) and the provisions of para. (1) through (6) in every subcontract or purchase order unless exempted by USDOL rules, regulations or orders issued pursuant to Sec. 204 of Executive Order 11246, so that such provisions will be binding upon each subcontractor or vendor.
- (6) The contractor shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event if a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the US Government to enter into such litigation to protect the interest of the United States.

Incorporation of Provisions - The contractor shall include the provisions of para. (1-8) in every subcontract, including procurements of materials and leases of equipment, unless exempt by regulation, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurements as RGRTA or 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 RGRTA to enter into such litigation to protect the interests of RGRTA and, in addition, the contractor may request the US Government to enter into such litigation to protect the interests of the United States.

38. Affirmative Action/Equal Employment Opportunity Policy & Requirements It is the policy of RGRTA and the USDOT that disadvantaged business enterprises, as defined in 49 CFR 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the DBE requirements of 49 CFR 26 apply to this agreement.

DBE Obligation RGRTA and its contractors shall ensure that DBEs as defined in 49 CFR 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, RGRTA and its contractors shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that disadvantage business enterprises have the maximum opportunity to compete for and perform contracts. RGRTA shall not discriminate on the basis of race, color, religion, marital status, disability, age, national origin, or sex in the award and performance of USDOT-assisted contracts.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest agrees as follows:

- a. **Compliance with Regulations:** The contractor shall comply with the regulations relative to non-discrimination in federally-assisted programs of the USDOT, 49 CFR 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.
- b. **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 non-discrimination on the grounds of race, color, sex, marital status, disability, age, or national origin.

Equal Employment Opportunity In connection with the execution of this contract, the contractor shall ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, marital status, age, disability, color, sex, or national origin. Such action shall include, but not be limited to the following: employment, training, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay, or other forms of compensation and selection of training, including apprenticeship.

Disadvantaged Business Enterprise (DBE) In connection with the performance of this contract, the contractor will cooperate with RGRTA in meeting its commitments and goals with regard to the maximum utilization of DBEs and will use its best efforts to insure that DBEs shall have the maximum practicable opportunity to compete for subcontracts under this contract.

The contractor or subcontractor 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 26 in the award and administration of USDOT-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 RGRTA deems appropriate.

RGRTA, in accordance with 49 CFR 26, Title VI of the Civil Rights Act of 1964 and 49 CFR 21, non-discrimination in Federally-assisted programs issued pursuant to such Act, and Sec. 105 (F) of the Surface Transportation Assistance Act of 1982 and Section 10g (c) of the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987, hereby notifies all bidders that it shall affirmatively insure that DBE's will be afforded full opportunity to submit bids and will not be discriminated against on the grounds of race, color, sex, national origin, marital status, religion, or age in consideration for an award.

Prompt Payment The contractor agrees to pay each subcontractor and supplier under this contract for satisfactory performance of its contract no later than thirty (30) calendar days from the date the contractor receives payment from RGRTA. The contractor further agrees to return retainage payments to each subcontractor within thirty (30) calendar days from the date of the satisfactory completion of the subcontractor's work. Any delay or postponement of payment may occur only for good cause following RGRTA's written approval. This clause applies to both DBE and non-DBE subcontractors.

The term "**Disadvantaged Business Enterprise (DBE)**" as used in this program means a small business concern (a) which is at least 51% owned and controlled by one or more of the presumptive group of socially and economically disadvantaged individuals, or in the case of any publicly-owned business, at least 51% of the stock of which is owned and controlled by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

The term "**Small Business Concern**" as used in this program means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

The term "**Disadvantaged Person**" as used in this program means "socially and economically disadvantaged individuals, means those individuals who are citizens of the US (or lawfully admitted permanent residents) and who are women; Black American (includes persons having origins in Mexico, Puerto Rico, Cuba, Portugal, Central and South America, the Dominican Republic, or Iberian Peninsula; Native Americans (includes persons who are American Indian, Eskimo, Aleut, and native Hawaiian) Asian Pacific Americans (includes persons having origins in Japan, China, Taiwan, Korea, Vietnam,

Laos, Cambodia, the Philippines, Samoa, Guam, and US Trust Territories of the Pacific Islands and the Northern Marianas); Asian-Indian Americans (includes persons whose origins are from India, Pakistan and Bangladesh) and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8 (a) of the Small Business Act, as amended (15 USC 637 (a)).

The term **“Social Disadvantage”** as used in this program means a condition which is directly attributable to a persons’ color, national origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual’s control. It is a condition which is rooted in treatment the individual has experienced in American society (not in other countries) and which has negatively affected his or her entry into/advancement in the business world. This condition must be chronic, long-standing, and substantial and must have been personally suffered by the individual.

The term **“Economic Disadvantage”** as used in this program means a condition of socially-disadvantaged individuals which impedes their ability to compete in the free enterprise system due to diminished capital and credit opportunities as compared to others in the same or similar line of business and competitive market area who are not socially disadvantaged.

The term **“Owned and Controlled”** as used in this program means a business that is (1) a sole proprietorship legitimately owned by an individual who is disadvantaged, a minority, or a woman; (2) a partnership of joint venture controlled by above persons and in which at least 51% of the beneficial ownership interest is held by these persons; or (3) a corporation or other entity controlled by above persons and in which at least 51% of the beneficial ownership interests legitimately are held by these persons; and (4) a corporation or other entity in which the disadvantaged or women-participation extends to the management and daily business operations insuring ownership and control.

The term **“Joint Venture”** as used in this program means an agreement between two (2) entities engaged in a single specific business venture for joint profit. An association of two (2) or more businesses to carry out a single business enterprise for profit in which they combine their property, efforts, skills, and knowledge. This association is limited in scope and duration and not on a continuing or permanent basis for conducting business. A Joint Venture cannot be certified as a DBE regardless of the percentage of DBE participation. Only the partner firm that is owned and controlled by socially and economically disadvantaged individuals and meet the eligibility standards set forth in this section can be certified as a DBE (as appropriate). The DBE partner must be responsible for a clearly defined portion of work to be performed and shared in the ownership, control, management’s responsibilities, risks, and profits of the joint venture. Only the DBE’s partner’s participation will be credited toward the DBE goal. Contract awards to businesses that are joint ventures with DBE components shall be counted towards fulfilling RGRTA’s DBE goal on the basis of percentage ownership for the eligible DBE in the joint venture. Where DBE ownership is 51% or greater, 100% of the dollar value is counted. Each DBE partner in a joint venture shall complete and submit all necessary ownership documentation and information which may be requested in order to substantiate its eligibility as a bona fide DBE.

The term **“Certification”** used in this program means the process by which a business is determined to be a bona fide DBE.

39. Ineligible Contractors and Subcontractors - Any name appearing upon the Comptroller General’s list of ineligible contractors for federally financed and assisted contracts shall not be eligible to act as a subcontractor for the contractor pursuant to this contract. If the contractor is on the Comptroller General’s list of ineligible contractors for federally financed or assisted construction, RGRTA shall cancel, terminate or suspend this contract.

40. 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 RGRTA's Procurement Guidelines, available upon request from RGRTA.

41. 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 4220.1E, "Third Party Contracting Requirements," dated June 19, 2003, 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. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause RGRTA to be in violation of FTA terms and conditions.

The 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 (Form FTA MA(6) dated October 1, 1999) between RGRTA and FTA, as may be amended or promulgated from time to time during the term of this contract. The contractor's failure to so comply shall constitute a material breach of this contract.

42. Real Property - Any contract entered into shall contain the following provision:

The 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, 29 CFR 18.31, 49 CFR 24 Subpart B, FTA Circular 5010.1B (Grant Management Guidelines) Chapter I-7(b), and FTA Master Agreement, Section 19 as they may be amended or promulgated during the term of this contract. The contractor's failure to so comply shall constitute a material breach of this contract.

NEW YORK STATE STANDARD CONTRACT CLAUSES

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 connector, licensor, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE

In accordance with Sec. 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 Sec. 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 previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment 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 Sec. 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Sec. 355 or Sec. 6218 of the Education Law), if this contract exceeds \$15,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain SUNY and CUNY 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, 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.

4. WORKERS' COMPENSATION BENEFITS

In accordance with Sec. 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

In accordance with 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, national origin, age, disability or marital status.

Furthermore, in accordance with Sec. 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public buildings 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, the 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 Sec. 230 of the Labor Law, then, in accordance with Sec. 239 thereof, the 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. The Contractor is subject to fines of \$50.00 per person per day for any violation of Sec. 220-e or Sec. 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE & HOURS PROVISIONS

If this is a public works contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither the 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, the 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 NYSDOL in accordance with the Labor Law.

7. NON-COLLUSIVE BIDDING REQUIREMENT

In accordance with Sec. 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, the Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further warrants 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 the Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION

In accordance with Sec. 220-f of the Labor Law and Sec. 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 2401 et seq.) or regulations hereunder. If such Contractor, or any of the aforesaid affiliates of the 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 contractor'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 (2 NYCRR 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 the State or any of its other departments or agencies, 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, 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 Ms to protect from public disclosure any of the Records which are exempt from disclosure under Sec. 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 & PRIVACY NOTIFICATION

(a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER All invoices or New York State standard vouchers submitted for payment for the sale of goods of services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on his invoice or New York State Standard voucher, 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 Sec. 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 other 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 New York State's Central Accounting System by the Director of State Accounts, Office of the State Comptroller, AESOB, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES & WOMEN

In accordance with Sec. 312 of the Executive Law, if this contract is:

- (i) a written Agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000, 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 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 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:
 - (a) The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, 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, upgrading, 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's 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.

The Contractor shall include the provisions of “a”, “b”, and “c”, above, in every subcontract over \$25,000 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. Sec. 312 does not apply to:

- (i) work, goods, or services unrelated to this contract; or
- (ii) employment outside New York State; or
- (iii) banking services, insurance policies, or the sale of securities.

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 Sec. 312 to the extent of such duplication or conflict. The Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority & 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 these New York State Clauses, the terms of these New York State Clauses 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 covered by Article XI-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"), the 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 US Postal Service as refused or undeliverable. The Contractor shall 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 shall have thirty (30) calendar days after service hereunder is complete in which to respond.

SCHEDULE I

NON-DISCRIMINATION PROVISIONS

During the performance of this Agreement, the Contractor itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees as follows:

1. **COMPLIANCE WITH REGULATIONS:** Contractor shall comply with the regulations relative to non-discrimination in federally-assisted programs of the New York State Department of Transportation and Title 49, Code of Federal Regulations, Part 26, as the same may be amended from time to time (hereinafter referred to as the “Regulations”), which are herein incorporated by reference and made a part of this Agreement.
2. **SOLICITATIONS FOR SUBCONTRACTS, INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT:** In all solicitations, either by competitive bidding or negotiations made by the Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor’s obligations under this contract and the Regulations relative to non-discrimination on the grounds of race, color, sex or national origin.
3. **INFORMATION AND REPORTS:** 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 Owner to be pertinent, to ascertain compliance with required Federal and/or State Regulations, orders and instructions. Where any information is required, or the Contractor is in the exclusive possession or control of another who fails or refuses to furnish this information, the Contractor shall so certify to the Owner, and shall set forth efforts it has made to obtain the information.
4. **SANCTIONS FOR NON-COMPLIANCE:** In the event of Contractor’s non-compliance with the non-discrimination provisions of this Agreement, the Owner shall impose such sanctions as it, the Federal Transportation Administration and/or the New York State Department of Transportation may determine to be appropriate, including, but not limited to:
 - a. withholding of payments to the Contractor under this Agreement until the Contractor complies; and/or
 - b. cancellation, termination or suspension of this Agreement, in whole or in part.
6. **INCORPORATION OF PROVISIONS:** Contractor shall include the provisions of paragraphs 1 - 4 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Contractor shall take such action with respect to any subcontract or procurement as the Owner may direct as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, Contractor may request the Owner to enter into such litigation to protect the interests of the recipient and, in addition, Contractor may request the

United States to enter into such litigation to protect the interests of the recipient or the United States.

SCHEDULE II

WAIVER OF IMMUNITY PROVISION

Contractor agrees to the provisions of Section 103(a) of the New York State General Municipal Law which requires that upon the refusal by a person, when called before a Grand Jury or the Organized Crime Task Force in the Department of Law, to testify concerning any transaction or contract the Contractor had with the State, any political subdivision thereof or of a public authority, to sign a Waiver of Immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract:

1. Such person, and any firm, partnership or corporation of which he is a member, partner, director or officer, shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any municipal corporation or fire district or any public department, agency or official thereof, for goods, work or services for a period of five (5) years after such refusal; and
2. Any and all contracts made with any municipal corporation of any public department, agency or official thereof since July 1, 1959, or with any fire district or any agency or official person, and by any firm, partnership or corporation of which he is a member, partner, director or officer may be cancelled or terminated by the municipal corporation or fire district without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the municipal corporation or fire district for goods delivered or work done prior to the cancellation or termination shall be paid.

SCHEDULE III

WORKERS' COMPENSATION LAW

Contractor will comply with the provisions of Chapter 41 of the Laws of 1914, as amended, known as the Workers' Compensation Law, and also the provisions of Article 9 of the Workers' Compensation Law known as the Disability Benefit Law, to the extent those provisions are applicable to such Contractor.

NON-COLLUSION AFFIDAVIT

STATE OF _____)
)
COUNTY OF _____)

Important: This affidavit must be properly completed and submitted with all bids

_____, the bidder submitted this proposal, being
Name of person making affidavit

first duly sworn, deposes and says that he is _____ of _____
Title

_____ and under penalties of perjury affirms:
Name of firm

8. The 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;
9. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
10. No attempt has been made or will be 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.
11. The bid was not made in the interest of or on behalf of any undisclosed person, partnership, company, organization or corporation.

Sworn to before me this _____

day of _____, _____.

Signature of person making affidavit

Notary Public

(SEAL)

ELIGIBLE BIDDER CERTIFICATE

I, _____, hereby certify that _____
Name of company official making the certification

_____ is not included on the U.S. Comptroller
Name of firm for which certification is made

General's Consolidated List of Persons or Firms Debarred From Federal Contracts for violations of
various contracts incorporating labor standards provisions.

Sworn to before me this _____

day of _____, _____

Signature of person making affidavit

Notary Public

Notary Seal

NOTE: This form must be submitted with all bids.

ROCHESTER-GENESEE REGIONAL TRANSPORTATION AUTHORITY

LIST OF SUBCONTRACTORS

The following subcontractor(s) are proposed for utilization in the above project.

<u>NAME & ADDRESS OF SUBCONTRACTOR</u>	<u>SCOPE OF WORK TO BE COMPLETED</u>	<u>\$ VALUE OF WORK TO BE SUBCONTRACTED</u>
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1 _____ _____ _____	_____ _____ _____	\$ _____
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Signature of Subcontractor: _____

2 _____ _____ _____	_____ _____ _____	\$ _____
---------------------------	-------------------------	----------

Signature of Subcontractor: _____

3 _____ _____ _____	_____ _____ _____	\$ _____
---------------------------	-------------------------	----------

Signature of Subcontractor: _____

4 _____ _____ _____	_____ _____ _____	\$ _____
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Signature of Subcontractor: _____

Contractor shall not assign, transfer, or otherwise dispose of this Agreement, or any parts hereof, or its rights, title or interest herein, to any person, company, or corporation without prior written consent of Regional Transit Service, Incorporated.

The Contractor and Subcontractor(s) hereby certify that all subcontracts contain all the provisions of the prime contract.

SIGNATURE OF SUBCONTRACTOR: _____

DATE: _____

AFFIDAVIT OF NON-DISCRIMINATION

STATE OF _____)

SS:

COUNTY OF _____)

_____, being first duly sworn, deposes and says:

1. That he/she is the _____ (President or other official title) of _____
_____ Company, or Partnership, a Corporation or Partnership organized and existing
under and by virtue of the laws of the State of _____.

2. That _____ does not and will not discriminate in its employment practices because of
race, religion, color, sex, national origin, handicapped persons or Vietnam-Era Veterans.

3. That _____ further understands this contract, purchase order, or agreement, is subject to
the Urban Mass Transportation Act of 1964, as amended, (49 USC 1601, et seq.), and shall be subject to all
rules and/or regulations issued pursuant thereto regarding non-discrimination in federally-assisted programs of
the United States Department of Transportation.

(SEAL)

Company or Partnership

(President or Other Official Title)

Subscribed and sworn to before me, this _____ day of _____, 20_____.

Notary Public in and for the County of

_____, State of _____

My commission expires on the _____ day
of _____, 20 _____.

THIS IS A SAMPLE ONLY

**YOUR COMPANY’S EEO POLICY STATEMENT MUST ACCOMPANY
THIS PROPOSAL
EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

TO: ALL EMPLOYEES

FROM: CHIEF EXECUTIVE OFFICER

The statement used by the Chief Executive Officer should include, but not be limited to the following:

Equal Employment Opportunity for all persons, regardless of race, creed, color, national origin, physical disability, religion, sex, or age is a fundamental company policy.

A requirement of Affirmative Action in order to overcome effects of past discrimination.

Responsibility for the EEO Program is assigned to a major company executive.

Affirmative Action will affect all employment practices including (but not limited to) recruiting, hiring, transfer, promotions, training, compensation benefits, layoffs, and terminations.

A requirement for goal-setting programs with measurement and evaluation factors similar to other programs within the company.

The company will periodically analyze its personnel actions to insure compliance with this policy.

Statement signed by the Chief Executive Officer.

**CERTIFICATION UNDER
STATE FINANCE LAW 139-j and 139-k
TO
ROCHESTER-GENESEE REGIONAL TRANSPORTATION AUTHORITY
REGIONAL TRANSIT SERVICE, INC.**

Described Procurement: _____

(Check as Applicable)

Designation of Individuals and Organizations to Influence This Procurement

☐ Contractor has not retained, employed, or designated any person or organization to influence this procurement under this agreement.

☐ Contractor has retained, employed, or designated the following person(s) or organization(s) to influence this procurement under this agreement and the following is true, complete and accurate information regarding each such person or organization.

Name: _____

Address: _____

Telephone Number: _____ Occupation: _____

Place of Principal Employment: _____

Such person or organization ☐ does not have ☐ has a financial interest in the procurement. If yes, describe that financial interest: _____

_____.

Name: _____

Address: _____

Telephone Number: _____ Occupation: _____

Place of Principal Employment: _____

Such person or organization ☐ does not have ☐ has a financial interest in the procurement. If yes, describe that financial interest: _____

Agreement

Contractor agrees to notify the RTS any time an additional person or organization is retained, employed or designated by Contractor to influence this procurement and to provide the information described above for any such person or organization.

Prior Findings

☐ Contractor has not been found non-responsible during the past five years in the connection with disclosure of information about persons or organizations attempting to influence procurements.

☐ Contractor has been found non-responsible during the past five years in the connection with disclosure of information about persons or organizations attempting to influence procurements.

Acknowledgment

Contractor acknowledges that RTS may refuse to award a contract to the Contractor and may terminate any contract that is awarded if RTS discovers that the Contractor has intentionally failed to provide true and complete information with respect to all persons employed, retained, or designated by the Contractor to influence this procurement or has made any false statement in this document.

Print Contractor Name

By: _____

Title: _____

Date: _____