

# **South East Texas Regional Planning Commission**



TRANSPORTATION &  
ENVIRONMENTAL  
R E S O U R C E S

## **Request for Qualifications**

### **Orange County Transit Facility Improvement Project**

**SETRPC RFQ-2**

**August 2025**

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## **Definitions**

- A&E Team – refers to a joint provision of professional, architectural, and engineering services, (A&E services)
- Consultant – Professional or consulting firm submitting a response to this RFQ. This shall also include the successful Consultant or Consultant Team or Firm
- Design professionals – Unless otherwise specified, definition shall encompass all professionals on the project to include but not limited to professional engineers, architects, designers, surveyors and so forth and any sub-consultants therewith
- Project Architect – the professional architect or engineer employed by the Owner as architect or engineer of record for the Project and its consultants.
- Project Manager – The person in overall charge of the planning and execution of a particular project
- RFQ – Request for Qualification; Based on the perceived ability of the submitting firms to best achieve the most desired outcome
- Respondent – a person who replies to this Request For Qualifications, supplies information to respond to a request.
- Response/Proposal – offering or suggesting something for acceptance; Request for Qualification; this solicitation
- SETRPC – South East Texas Regional Planning Commission
- Solicitation – the act of requesting

## **General Information**

South East Texas Regional Planning Commission (SETRPC) is soliciting proposals for Qualifications leading to the selection of a Comprehensive Design, Architecture and Engineering Firm to provide professional services for the Design through Construction Closeout of a SETRPC project located in Orange County, Texas (the “Project”). It is the intent of SETRPC to select a single consultant or consultant team to accomplish all the services outlined in this Request for Qualifications (RFQ).

SETRPC will receive responses and select a candidate by entering into a contract and continuing for a period sufficient to complete the scope of work starting from the effective date of the contract through completion of all propositions.

IT IS UNDERSTOOD that SETRPC reserves the right to negotiate all elements that encompass the response and to accept or reject part or all of any response.

## **Project Description**

This Project will provide for site improvements, facility improvements for emergency operations (interior improvements), new bus wash system, and maintenance bay improvements. The current transit facility includes a concrete paved parking area, a metal building for administrative offices and covered/enclosed garage and maintenance areas including approximately 14 pull-through bays, utilities including potable water and wastewater systems, a propane fueling station, a vehicle wash bay, paved drive, and a perimeter security fence.

Improvements subject to this RFQ include, but may not be limited to: facility access and vehicle circulation improvement; additional parking spaces for transit vehicles, employees and visitors; restroom shower conversion for emergency operations; new shower stall (prefabricated) installation and renovation; floor drain tied into existing drain and vent system; shower faucet tied into existing hot and cold water supply; washer and dryer connection installation; 30-amp breaker and distribution to new 220-Volt outlet; dryer vent exhausted to exterior;

washer drain tied into existing drain system; and washer water supply tied into existing hot and cold water supply.

SETRPC will also require the selected Consultant to assist SETRPC staff in the Bidding and Negotiation of those documents, the Selection and Contracting of a qualified General Contractor, and shall perform Construction Administration Services through Construction to project Close-out.

To that, SETRPC seeks information and qualifications from interested, qualified and experienced firms to provide assistance (as requested) in all phases of the project described in this RFQ package and outlined in the Anticipated Consultant Services and Scope of Services.

### **General Terms and Conditions**

#### **A. Evaluation of Documents**

By submitting a response, the Respondent represents that it has thoroughly examined and become familiar with the scope of work required under this RFQ, and that it is capable of performing quality work to achieve SETRPC's objectives. SETRPC reserves the right, in its sole judgment and discretion, to waive minor technicalities and errors in the best interest of the project.

#### **B. Pre-Proposal/Pre-Response Meeting**

SETRPC will conduct a **non-mandatory** pre-proposal/pre-response meeting where proposers can ask questions about the Project. The pre-proposal meeting will be held **August 11, 2025, @ 2:00 pm** at SETRPC located at 2210 Eastex Freeway, Beaumont, TX 77703.

#### **C. Addenda/Clarifications**

Any changes to this RFQ will be made by written addendum. No verbal modifications will be binding. Questions or comments regarding this RFQ must be received no later than **5:00 p.m. CDT, August 18, 2025**. All questions should be submitted electronically via email to [bdickinson@setrpc.org](mailto:bdickinson@setrpc.org) with the subject line of "Questions RFQ-Orange County Transit Facility Improvement Project". Responses to all questions regarding this RFQ will be sent in writing solely through email to all recipients of this RFQ by **5:00 p.m. CDT, August 22, 2025**.

#### **D. Submission of Qualifications**

All responses are to be bound, sealed, and received no later than **2:00 p.m. CDT, September 8, 2025**. All responses must be sent to:

**South East Texas Regional Planning Commission**

**Attn: Bob Dickinson**

**2210 Eastex Freeway**

**Beaumont, Texas 77703**

#### **MARK ENVELOPE WITH:**

Name and Address of Responding Firm and

"Attention: Bob Dickinson, Director of Transportation and Environmental Resources Division

Request for Qualifications – Orange County Transit Facility Improvement Project

Due September 8, 2025"

Faxed and e-mailed submissions will NOT be accepted.

Responses received after this time and date will not be accepted and will be returned to the vendor unopened. The vendor shall submit one (1) original plus six (6) copies and one (1) electronic version on a flash drive, all enclosed in a sealed envelope. The envelope must be addressed as noted above, bearing the vendor's name and address, and clearly and appropriately marked "SETRPC RFQ- Orange County

Transit Facility Improvement Project ” and must be submitted in accordance with requirements set forth in the RFQ by **2:00 p.m., CDT, September 8, 2025**.  
Late submittals will not be accepted and will be returned to the Respondent unopened.

**E. Anticipated Consultant Services**

The Consultant shall retain sub-consultants, or have proven in-house expertise, for the following specialties to provide technical assistance in the development of the project.

- Project Management
- Architectural
- Civil Engineering
- Geotechnical Services
- Structural Engineering
- Mechanical, Plumbing and Fire Protection Engineering
- Electrical engineering to include lighting and emergency power systems
- Space Planning and Interior Design
- Landscape Design
- Renewable Energy Consulting/Sustainable Design, including solar panel design
- Environmental Services
- Land Survey
- Construction Cost Estimating

**F. Procurement Timeframe**

Following are the required timeframes for the procurement:

- |   |                                 |           |
|---|---------------------------------|-----------|
| • Release of RFQ                          | August 4, 2025                  | 5:00 p.m. |
| • Pre-Proposal/Pre-Response meeting       | August 11, 2025                 | 2:00 p.m. |
| • Written Questions                       | August 18, 2025                 | 5:00 p.m. |
| • Responses to questions                  | August 22, 2025                 | 5:00 p.m. |
| • Response Due Date                       | September 8, 2025               | 2:00 p.m. |
| • Interviews (if necessary)               | Week of September 15, 2025      |           |
| • Selection and Award                     | (TBD) October 20, 2025          |           |
| • Successful implementation/begin project | 30 days after notice to proceed |           |

**G. Pre-Contractual Expenses**

Pre-contractual expenses are defined as expenses incurred by Consultant in: 1) preparing its response to this RFQ; 2) submitting that response to SETRPC; 3) negotiating with SETRPC any matter related to this RFQ; and 4) any other expenses incurred by the consultant prior to date of award, if any.

SETRPC shall not, in any event, be liable for any pre-contractual expenses incurred by consultant in the preparation of their qualification’s response. Consultants shall not include any such expenses as part of their response.

**H. Exceptions/Deviations**

Any exceptions to the requirements in this RFQ must be included in the response submitted by the Respondent. Such exceptions must be clearly labeled as such in the text of the response and in a separate section entitled: **EXCEPTIONS**.

**I. Contract Award**

Issuance of this RFQ and receipt of responses does not commit SETRPC to make a recommendation regarding the most appropriate consultant nor does it commit SETRPC to award a contract. SETRPC reserves the right to postpone opening for their own convenience, to accept or reject any or all responses received to this RFQ, to negotiate with other than the selected consultant should negotiations with the

selected consultant be terminated, to negotiate with more than one consultant simultaneously, to contract with two consultants, or to cancel all or part of this RFQ.

**J. Type of Contract**

The successful consultant will be subject to the provisions contained in this RFQ, except that changes may be made (if exceptions are accepted) to reflect the terms of the successful consultant's response. SETRPC reserves the right to approve or reject any sub-consultant relationship if changes or additions of sub-consultants are necessary during the life of the contract.

Any contract resulting from this solicitation will be through the SETRPC. The contract will be an AIA B-Series Owner/Architect Agreement. Additional Federal and State assurances and certifications will be required.

**K. Payment Terms**

It is anticipated that the contract resulting from this solicitation, if awarded, will be for a fixed price for the successful completion of the scope of work agreed upon. Payment will be made monthly, based on percentage of work completed.

**L. Assignment**

No right or duty in whole or in part by the contractor under this contract may be assigned or delegated without the written consent of SETRPC.

**M. Hold Harmless**

The vendor/Consultant will indemnify and save harmless SETRPC and all of its officers, agents, and employees from all suits, actions, or claims of any character brought for or on account of any inquiries or damages received by any persons or property resulting from the operations of the consultant, or of any of its sub-consultants, in prosecuting work under this RFQ and any resulting contracts.

**N. Texas Open Records Act**

Responses will remain on file in accordance with the Texas Open Records Act. All information, documentation, and other materials submitted in response to this solicitation are considered non-confidential and/or non-proprietary and are subject to public disclosure under the Texas Public Information Act (*Texas Government Code*, Chapter 552.001, *et seq.*) after the solicitation is completed. SETRPC will comply with all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of RFQ information.

**O. All Other Federal Transit Administration (FTA) and Other Governmental Requirements**

Consultant shall adhere to all other federal and state policies and procedures current and in the future regarding this RFQ. Standard FTA requirements are detailed in this RFQ, Applicable Federal Contract Clauses, and those requirements imposed by the Texas Department of Transportation (TxDOT) in its role as designated recipient for FTA funds.

**P. Right to Cancel**

SETRPC reserves the right to cancel an awarded contract with a thirty (30) day written notice if performance is unsatisfactory. No penalty and/or fee may be imposed if contract is cancelled or not renewed.

**Q. Conflict of Interest**

Chapter 176 of the Texas Local Government code requires entities seeking to contract and/or contracting with local government entities for the sale of goods or services, and their agents, to complete, sign and file a Conflict of Interest (Form CIQ) with SETRPC. If the bidder or a principal of the bidder has a business relationship with SETRPC or with a SETRPC official, the name of the contract or SETRPC official must be disclosed on the CIQ form. If the bidder or a principal of the bidder has no business relationship with SETRPC official, write/type in "none" in the form and write/type in the name

of the bidder and person acting for the bidder and sign the CIQ form and return with the response. If you are not sure how to fill in the CIQ form, contact your attorney for advice. The CIQ form is included as part of this RFQ packet.

**R. SETRPC Protest Procedures**

Any actual or prospective Respondent who is aggrieved in connection with a purchase transaction may file a grievance. The grievance may be filed at any phase of the procurement.

If a Respondent perceives that a segment of the specifications is either too restrictive for completion or if the Respondent perceives any improprieties in the solicitation or specifications, a written protest must be sent via Certified United States mail with a return receipt request to SETRPC, c/o Bob Dickinson, 2210 Eastex Freeway, Beaumont, Texas 77703.

Any protests concerning the award of the contract after consultant selection, or after an evaluation of responses submitted under an RFQ, must be made in writing and sent via Certified United States mail with a return receipt request to SETRPC, c/o Bob Dickinson, 2210 Eastex Freeway, Beaumont, Texas 77703 within seven (7) days after the public announcement in order to permit SETRPC the opportunity to resolve the issue prior to contract award.

The protest must include: the name, mailing address and business phone number of Respondent; RFQ title and number; a precise, factual statement of the grounds for protest including any supporting exhibits, evidence or documents to substantiate any claims; and the desired relief, action or ruling from SETRPC.

Within five (5) days following an adverse decision, Respondent may file a written appeal with the SETRPC Executive Director, Shanna Burke. The decision reached by the Executive Director shall be final. This decision will be forwarded to the Respondent in writing within thirty (30) business days. For further information regarding the SETRPC Protest Procedures, please refer to the SETRPC Procurement Policy which is available by request at the address above.

**Anticipated Scope of Services**

The successful Consultant will be a highly skilled and experienced project team comprised of seasoned, well-rounded team members with related experience in the following areas discussed below. Consultant's team shall have the facility planning, design, and construction management experience in managing complex construction projects, preferably those requiring governmental involvement and governmental approvals. Services shall include all general leadership and management functions required of a project management Consultant including but not limited to: Design-Bid-Build standards, value- engineering options, procurement validating programming results, tracking budgets, providing construction project payout projections to SETRPC as required, preparing cost estimates and schedules, validating construction cost/cost of work, monitoring schedules; overseeing quality of all aspects of the project; communication with the project team; coordinating all issues, documentation, minutes, action items, and approvals to move the project through all the various phases; providing direct interface with SETRPC staff, County and State Agencies, end-users and other stakeholders as required; briefing officials, and Council / Boards / Commissions / Public committees.

This scope of services also intends (IF REQUIRED) that the selected consultant team may need to engage Survey services, Geotechnical services, and Environmental services as required to successfully implement the project. These engagements will be done in consultation with SETRPC.

Points of Interest:

1. Maintain a single point of contact for SETRPC.
2. Create a comprehensive project plan and schedule providing the best delivery approach to package and

implement project at various phases.

3. Work with SETRPC staff and SETRPC financial team to track project costs, project cash flows, monitor, and manage all payments to consultants and contractors.
4. If required, assist with easement and/or right-of-way acquisition in the coordination of acquisition services and the timely acquisition of easements and/or right-of-way. This would include providing preliminary cost estimates, a priority acquisition schedule and acquiring all permits required.
5. Provide design professional program activities related to establishing the systems and procedures necessary to implement the design and construction project, ensuring consistency in design of the Facility to comply with requirements of all applicable jurisdictions, codes and regulations, including but not limited to Orange County planning, building, public works, and fire departments, International Building Codes, State of Texas Building Codes, Americans with Disabilities Act, Federal Transit Administration (FTA), and the Texas Department of Transportation (TxDOT) as well as implementing all SETRPC, Local, State and Federal Standards.
6. Manage and oversee the preparation of the design, construction documents and bidding activities. Consultant shall prepare detailed plans and project manual (specifications) to be included in the bid documents. The project will be bid under Request for Proposal (RFP) context, in accordance with SETRPC Procurement Policies. During preconstruction bid phase Consultant shall respond to prospective bidder questions regarding design documents and prepare addenda as necessary.
7. Conduct, as necessary, a constructability review and provide value engineering services for projects outside of the scope and budget to ensure that SETRPC intent is incorporated and plans and specifications reflect proposed intent.
8. Include periodic estimates of probable costs and an independent cost estimate (ICE) when CD is near completion (typically at 90%).
9. Manage contracts (AIA Series) between vendors, design professionals, construction firms, special consultants, etc., related to the project.
10. Conduct site visits and inspections to review work in place and report in a standard format to SETRPC with reference to facilities standards/specifications, schedules, and budgets. Monitor construction progress and advise SETRPC of any observations of non-conforming scope or workmanship quality concerns.
11. Administrate construction contract and general conditions and serve as SETRPC representative.

SETRPC expects Consultant to prepare a comprehensive proposal with recommendations, actions, and procedures to accomplish the objectives set forth above. The Consultant should be readily accessible to meet with SETRPC during the project.

SETRPC shall provide all relevant data in its possession that pertains to this project in support of the Consultant's professional services. SETRPC's Project Manager, an Agent of SETRPC, will coordinate this Project.

### **Specific Scope of Services for A&E Services to be Provided**

The A&E Team must include all disciplines and areas of expertise necessary to plan, design, and engineer the construction of the Facility. The design of the Facility shall comply with requirements of all applicable jurisdictions, codes and regulations, including but not limited to County planning, building, public works, and fire departments, International Building Codes, State of Texas Building Codes, Americans with Disabilities Act, Federal Transit Administration (FTA), and others.

### **Design Development**

The intent is to develop design documents and specifications to a sufficient level of detail so as to incorporate all features required to accomplish SETRPC objectives. These features will include architectural, civil, mechanical, electrical, structural, equipment, landscaping, site and offsite work, and other tasks. Construction cost estimates

must be developed to a significant confidence level.

### Construction Documents

The A&E Consultant will act as SETRPC Project Architect and oversee the development of construction documents suitable for bid letting for construction, including a project manual and all schematics necessary. The project manual and the RFP for construction services will comply with and include all TxDOT and FTA requirements as well as local, state, and federal codes and regulations.

### Bidding and Award

- ☐ Consultant shall prepare detailed plans and specifications to be included in the bid documents. The project will be bid under a Request for Proposal (RFP) context, not an Invitation for Bid process.
- ☐ During preconstruction bid phase Consultant shall respond to prospective bidder questions regarding design documents and prepare addenda as necessary.
- ☐ Assist SETRPC with bid evaluations.
- ☐ Prepare the AIA Owner Contractor Agreement

### A&E Support during Construction – Construction administration

- ☐ Review the contractor's Construction Documents to ensure that SETRPC intent is incorporated, and plans and specifications reflect the bid.
- ☐ Review all shop drawings and submittals.
- ☐ Attend bi-weekly construction progress meetings on site and provide general construction oversight as SETRPC A&E Consultant.
- ☐ Review Potential Change Orders (PCO) and provide input in the Change Order Process.
- ☐ Review and approve AIA Applications for Payment (G702) to ensure work aligns with contract documents and is eligible for payment.
- ☐ Develop construction punch list.
- ☐ Develop Facility Maintenance Manual.

In addition to the tasks listed above, Consultant shall also perform the following services:

- ☐ Meet with SETRPC to discuss all aspects of the project, including scope, purpose, schedule, budget, and design alternatives.
- ☐ Meet with SETRPC at least every two weeks to report on and review the progress of the work. A brief written summary of these meetings shall be prepared by Consultant and submitted to SETRPC.
- ☐ Prepare base schedule and provide an updated project schedule at progress meetings.
- ☐ Make presentations to SETRPC at appropriate times during the course of the Project. Consultant shall make at least three presentations to the SETRPC Board during the design phase of the Project.
- ☐ Provide SETRPC with electronic copy of all documents developed during the contracted period.

SETRPC expects Consultant to prepare a comprehensive proposal with recommendations, actions, and procedures to accomplish the objectives set forth above. Consultant should be readily accessible to meet with SETRPC during the project.

SETRPC shall provide all relevant data in its possession that pertains to this project in support of Consultant's

professional services. SETRPC will coordinate and manage this Project.

### **Response Submission Requirements**

Responses shall be submitted on 8 ½" x 11" size paper, using a simple method of fastening. Responses should be typed and should not include any unnecessarily elaborate or promotional material. A lengthy narrative is discouraged, and presentations should be brief and concise. The response must respond directly to this RFQ. **Failure to respond to the requirements of the RFQ may result in the rejection of said response.**

### **Response Content – Must include the following items:**

- ☐ Cover Letter
- ☐ Executive Summary
- ☐ Conceptual Renderings or Site Plans (not required but located here)
- ☐ Detailed Scope of Work
- ☐ Exceptions to RFQ
- ☐ Proposed Schedule / Milestones
- ☐ Firm Background, Principal Officer, and Project Manager
- ☐ Firm/Staff Qualifications, including the prime consultant and all sub-consultants Experience References
- ☐ Disadvantage Business Enterprise (DBE) Utilization
- ☐ Disadvantage Business Enterprise (DBE) Letter of Intent
- ☐ Lobbying Certification
- ☐ Disclosure of Lobbying Activities
- ☐ Debarment and Suspension (non-procurement)
- ☐ Lower Tier Participation Debarment Certification
- ☐ Texas Corporate Franchise Tax Certification
- ☐ Acknowledgment of Addenda Received
- ☐ Conflict of Interest Questionnaire (CIQ)
- ☐ Consolidated Certification Form (Form PTN-130)
- ☐ Certifications and Assurances for FTA Assistance Programs

### **Cover Letter**

A letter of interest and a brief description of the response including a summary of Consultant team's qualifications, name, title, telephone number, and e-mail address of the contact person who will be authorized to make representations for the organization shall also be provided. The cover letter must also identify the "Project Manager" designated by Consultant who will coordinate all aspects of project planning, design, and engineering, and provide construction administration services. This individual cannot be replaced without SETRPC written approval.

### **Table of Contents**

An outline of the response shall be included.

### **Qualifications of the Firm – Include the following for each firm:**

- ☐ A brief company profile, including types of service offered; the year founded; number, size, and location of offices; number of employees.
- ☐ A general description of the firm's financial condition, and any other condition (e.g., bankruptcy, pending litigation, planned office closures, impending merger) that may impede the firm's ability to complete the

project.

- ☐ A brief company history of comparable work. Describe all firms' related experience in performing work of a similar nature to that solicited by this RFQ.
- ☐ A list of at least four (4) recent projects similar in scope, including any representative projects the proposed design team has worked on together.
- ☐ Experience in working with various governmental and regulatory agencies that may have jurisdiction over the approval of the work specified in this RFQ.
- ☐ Submit any additional documentation related to experience in sustainable design, whether similar in scope or not.

### Qualifications of Assigned Staff

Describe the activities of the designated Project Manager/Project Architect/Project Engineer, and lead personnel from both the prime and sub-consultants. Provide a resume for each person named, including their qualifications (education and experience). Highlight participation of lead personnel in projects of similar nature, and their experience working with the other members of the proposed consulting team.

### Management Approach

Establish the approach that will be used by Consultant to manage the project:

- ☐ Discuss management approach during all phases of the project.
- ☐ Identify key personnel proposed to perform the work, including providing a staffing matrix.
- ☐ Confirm availability of key personnel to the extent proposed for the duration of the project, acknowledging that no person designated as "key" to the project shall be removed or replaced without SETRPC prior written concurrence.
- ☐ Discuss quality control and value engineering methods to be utilized as part of the design development process.

### References

A minimum of three (3) references should be provided for Consultant preferably on similar projects. Furnish the name, title, e-mail, address, and telephone number of the person at the client organization who is most knowledgeable of the representative work performed. Consultants may also supply references from other work not cited under "Qualifications" as related experience.

### Project Approach

A description for each major/significant task and subtask identified in the scope of work, as well as planning, design, and public engagement approach.

### Additional Information

Include any additional information deemed pertinent to the Response. Lengthy narrative is discouraged, and presentations should be legible, brief, and concise.

### Proposed Schedule

Project should be completed by April 30, 2027. The A&E's team should conform their schedule to meet the completion date.

A proposed schedule for completing each task / phase should be provided. The schedule shall also reflect expected dates for deliverables, anticipated timing for meetings, and identify the maximum allowable times required.

## **Exceptions/Deviations**

Include all exceptions to, or deviations from, the requirements of the RFQ. Each exception must reference the particular section listed in this RFQ. If the firm has no clarification, exception, or deviation from any of the terms and conditions contained within this RFQ, a statement to that effect shall be included in the response. Respondent may also propose procedural or technical enhancements/innovations to the project, which do not materially deviate from the objectives or required content of the project.

## **Evaluation and Selection**

### **Evaluation Criteria**

Primary consideration will be given to the general appropriateness of the response with respect to the project, the technical competence and creative ability of Consultant's willingness to work closely with SETRPC staff, its Agents, and other consultants. SETRPC reserves the right to reject responses that are determined to be inappropriate, inadequate, or incomplete. The Consultant Selection Committee will evaluate all responses for completeness, adequacy, technical competence, and the suitability of the consultant.

SETRPC will evaluate the responses received based on the following main criteria:

- ☐ Qualifications of Consultant [40%] – Technical experience of Consultant's team, and the Project Manager/Architect in particular, in performing work on similar projects; experience working with public and regulatory agencies; strength and stability of the prime firm and its sub-consultants; assessment by client references.
- ☐ Management Approach/Experience [20%] – Experience of firm in similar projects and the key personnel's level of involvement in performing related work as shown in the staffing matrix; and logic of project organization and management.
- ☐ Scope of Work [30%] – Depth of Consultant's understanding of SETRPC requirements and overall quality of work plan; logic, clarity, and specificity of work plan; ability to meet the project deadline; reasonableness of proposed schedule; suggested technical or procedural innovations, including state-of-the-art energy efficiency design and sustainable building methods.
- ☐ Completeness of Response [10%] – Completeness of response in accordance with the RFQ instructions; exceptions to or deviations from the RFQ requirements; other relevant factors not considered elsewhere.

### **Evaluation Procedure**

- ☐ A Consultant Selection Panel will review the responses and participate in interviewing short-listed consultants, if deemed necessary.
- ☐ SETRPC Staff or its Agents will contact client references for the prime and sub-consultants.
- ☐ Upon ranking the responses, an award may be recommended at that time, or, if it is determined necessary by the Consultant Selection Panel, up to three (3) consultant teams could be short-listed and invited for interviews. Additional teams may be interviewed as deemed necessary, prior to determining final rankings. The Consultant's Project Manager and key sub-consultants must attend any interviews determined necessary.
- ☐ After final ranking, contract award will be based on contract negotiations, which will be held with the top-ranked Consultant. If an agreement cannot be reached, negotiations will be terminated, and may be held in rank order with other consultants until agreement on scope and fees can be reached.
- ☐ All prime consultants will be informed of the final ranking of the Respondents.

## **Applicable Federal Contract Clauses**

### **1. Energy Conservation Requirements**

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

## **2. Clean Water Requirements**

- 1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- 2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

## **3. Access to Records**

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the CS, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i) (11).

## **4. Federal Changes**

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

## **5. Clean Air Requirements**

- 1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- 2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

## **6. No Government Obligation to Third Parties**

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

## **7. Program Fraud and False or Fraudulent Statements**

- 1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. P 31, apply to its actions pertaining to this Project. Upon execution of the

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

- 2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- 3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## 8. Civil Rights Requirements

- 1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- 2) **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:
  - (a) **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Ps 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
  - (b) **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
  - (c) **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the

requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. P 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

## **9. State and Local 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 grantee's procurement documents, the grantees should consult with their local attorney.

## **10. Incorporation of FTA Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E 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 SETRPC requests, which would cause SETRPC to be in violation of the FTA/TxDOT terms and conditions.

## **11. Conflict of Interest**

- 1) Contractor covenants that both itself, its principals and its subcontractors presently have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract.
- 2) Prior to entering into this Contract, Contractor is required to inform SETRPC of any real or apparent organizational conflict of interest. Such organizational conflict of interest exists when the nature of the work to be performed under a contract may, without some restriction on future activities, results in an unfair competitive advantage to Contractor, or may impact the contractor's objectivity in performing the contract work.

## **12. Termination Provisions**

If the Contractor does not perform the service in accordance with the contract provisions and the contractor fails to provide the service as requested herein, The SETRPC may terminate the contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for service rendered up to the date of the notice from SETRPC.

## **13. Disadvantaged Business Enterprises (DBE)**

In connection with this solicitation and any resulting contract, SETRPC has established the following goals for this project for Disadvantaged Business Enterprise (DBE) participation: **DBE Goal: 5.0% of the total dollar value of the response (Total Response).**

The bidder is required to furnish the following documentation at the time of its response:

1. The names and addresses of DBE firms that will participate in the Contract.
2. A description of the work that each DBE will perform.
3. The dollar amount of the participation of each DBE firm participation. A proposer will be required to submit the following information to SETRPC within five (5) working days of receiving a written request for the information from SETRPC.
4. Written documentation of the bidder's commitment to use a DBE subcontractor whose

participation it submits to meet a contract goal.

5. Written confirmation from the DBE that it is participation in the Contract as provided in the bidder's commitment.
6. If the contract goal is not met, evidence of good faith efforts must be provided. In particular, bidder should note the requirements for counting DBE participation in the current DBE regulation, 49 CFR P 26. The requirements of 49 CFR P 26 are reflected in the attached DBE Participation Schedule.

#### **14. Suspension and Debarment**

This RFQ is a covered transaction for purposes of 49 CFR 29. As such, the Contractor is required to verify that none of the Contractor's principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded, or disqualified as defined at 49 CFR 29.940 and 29.945. The Contractor is required to comply with 49 CFR 29, P C and must include the requirement to comply with 49 CFR 29, P C in any lower-tiered transaction it enters into. By signing and submitting its bid, the bidder certifies as follows: *The certification in this clause is a material representation of fact relied upon by SETRPC. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to SETRPC, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.*

#### **15. Breach and Dispute Resolution**

**Disputes:** Disputes arising in the performance of this RFQ or resulting contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of SETRPC. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to SETRPC's Executive Director, Shanna Burke. 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 SETRPC's Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance during Dispute:** Unless otherwise directed by SETRPC, Contractor shall continue performance under the contract while matters in dispute are being solved.

**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 or damage.

**Remedies:** Unless this contract provides otherwise, all claims, counterclaims, disputes, and other matters in question between the SETRPC 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 in Jefferson County, State of Texas where SETRPC is located.

**Rights and Remedies:** The duties and obligations imposed by the Contract documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by the SETRPC 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 there under, except as may be specifically agreed in writing.*

#### **16. Lobbying (31 U.S.C. 1352, 49 CFR P 19, 49 CFR P 20)**

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L.104-65 (to be codified at 2 U.S.C. § 1601, et seq.) – CONTRACTOR, if this Agreement is for \$100,000 or more, shall file the certification required by 49 CFR P 20, "New Restrictions on Lobbying,"

and shall include this clause in each subcontract for \$100,000 or more and shall require its inclusion in all lower tier transactions for \$100,000 or more. "Each contractor tier shall certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each contractor tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from contractor tier up to SETRPC.

## **17. ADA Access**

1. CONTRACTOR agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. CONTRACTOR also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, CONTRACTOR agrees to comply with applicable implementing Federal regulations any later amendments thereto and agrees to follow applicable Federal directives except to the extent FTA approves otherwise in writing. Among those regulations and directives are: (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. P 37;
2. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. P 27;
3. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. P 1192 and 49 C.F.R. P 38;
4. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. P 35;
5. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. P 36;
6. U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
7. U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. P 1630;
8. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. P 64, Subpart F;
9. U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. P 1194;
10. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. P 609; and
11. Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

## **SPECIAL PROVISION**

## Notice to All Bidders

To report bid rigging activities call: 1-800-424-9071

The U.S. Department of Transportation (DOT) operates the above toll-free “hotline” Monday through Friday, 8:00 a.m. to 5:00 p.m., eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the “hotline” to report such activities.

The “hotline” is part of the DOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General. All information will be treated confidentially, and caller anonymity will be respected.

### OFFEROR QUESTIONNAIRE AND INFORMATION FORM

Offeror MUST complete this form in its entirety. If a question is not applicable, Offeror should state “not applicable”.

#### BUSINESS AND CONTACT INFORMATION

Business Name:

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Federal Tax ID #:

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Address:

---

City/State/Zip:

---

Contact Name:

---

Phone #:

---

Fax #:

---

E-Mail:

---

Web Site:

---

NIGP Code: \_\_\_\_\_

Number of Years in Business: \_\_\_\_\_

Duns # \_\_\_\_\_

Is Business an MBE ☐ or WBE ☐ or neither ☐ ?

Type of Business Entity: Corporation ☐ LLC ☐ LP ☐ LLP ☐ Other ☐

In What State & Year Did Business Organize in Your Current Structure: \_\_\_\_\_

Is Business or Parent Publicly Traded? Yes ☐ No ☐ Full Legal Name of Parent or Holding Company, if any:

(Note: if there are several tiers of ownership, attach a corporate organizational chart)

Services Provided by Business:

Names and Positions of the individuals authorized to bind Offeror's company:

\_\_\_\_\_  
\_\_\_\_\_

<b>GENERAL CONTRACT INFORMATION/PERFORMANCE</b>
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In the past three (3) years, has Business:

- (a) Been engaged in any litigation? Yes ☐ No ☐ If yes, attach explanation
- (b) Completed all contracts it was awarded? Yes ☐ No ☐ If no, attach details.
- (c) Been awarded a bonus for early completion of Work? Yes ☐ No ☐ If yes, attach details.
- (d) Defaulted on a contract? Yes ☐ No ☐ If yes, attach details.
- (e) Been assessed liquidated damages? Yes ☐ No ☐ If yes, attach details.

<b>SPECIAL CONTRACT INFORMATION/PERFORMANCE</b>
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Provide a schedule of contracts under which Business has performed similar construction in the last five (5) years, showing name and address of customer, amount of each contract and the actual or anticipated dates of completion.

Is your firm bondable? ☐ Yes ☐ No

With Whom: \_\_\_\_\_

What Limits: \_\_\_\_\_

Bank credit available: \$ \_\_\_\_\_

Have the principals of your firm been engaged in providing construction under any other name within the past five (5) years? If so, provide the name of such principal(s) and the name and address of the former business.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The undersigned Offeror declares: (a) that it has reviewed and agrees to the Terms and Conditions, Scope of Work, and all other documents herein; (b) that through its authorized personnel it has personally examined the location of the proposed work and has determined the amount and character of the proposed work and

the supervision, labor, tools, material as identified, and equipment, necessary to complete the same in compliance with the specifications and contract documents (if applicable); (c) that either (1) no delinquent corporate franchise taxes are owed the State of Texas under Chapter 171, Tax Code or (2) the Offeror is not subject to the corporate franchise tax in Texas.

**SIGNATURE:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**PRINTED NAME:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

### **Disadvantage Business Enterprise (DBE) Utilization**

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

\_\_\_\_\_The bidder/offeror is committed to a minimum of \_\_\_\_\_% DBE utilization of this contract.

\_\_\_\_\_The bidder/offeror (if unable to meet the DBE goal of \_\_\_\_\_%) is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**PRINTED NAME:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

## Disadvantage Business Enterprise (DBE) Letter of Intent

Name of bidder/offeror's firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of DBE Firm: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Description of work to be performed by DBE firm:

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The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is

\$ \_\_\_\_\_

### Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: \_\_\_\_\_  
Signature Title

*If the bidder/offeror does not receive award of the prime contract, any and all representations in this letter of intent and affirmation shall be null and void.*

## ACKNOWLEDGMENT OF ADDENDA RECEIVED

The undersigned acknowledges receipt of the following addenda to SETRPC Request for Qualifications documents (give number and date of each):

Addendum Number _____	Dated: _____
Addendum Number _____	Dated: _____
Addendum Number _____	Dated: _____
Addendum Number _____	Dated: _____
Addendum Number _____	Dated: _____

Failure to acknowledge receipt of all addenda may cause the response to be considered non-responsive to the request that would require rejection of the response.

The undersigned understands that any condition stated above, clarification of the above, or information submitted on or with this form other than requested will render the quotation non-responsive.

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip \_\_\_\_\_

Type Name By: \_\_\_\_\_

Signature of Authorized Official: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether sub awardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence 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 a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State, and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the sub awardee, e.g., the first sub awardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "sub awardee," then enter the full name, address, city, State, and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State, and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
(b) Enter the full names of the individual(s) performing services and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

## DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352 (See reverse for public burden disclosure)

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change <b>For Material Change Only:</b> year_ _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity:</b> Name: _____ Address: _____  _____ Prime      _____ Subawardee Tier, if known:  Congressional District, if known: _____		<b>4. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b>   Congressional District, if known: _____
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable: _____	
<b>8. Federal Action Number, If known:</b>	<b>9. Award Amount, if known:</b>	
<b>10.a. Name and Address of Lobbying Registrant:</b> <i>(if individual, Last Name, First Name, MI):</i>  (attach Continuation Sheet(s) SF-LLL-A, if necessary)	<b>10.b. Individual Performing Services</b> <i>(including address if different from No. 10.a.) (Last Name, First Name, MI):</i>	
<b>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annual and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b>	Signature: _____  Print Name: _____ _____  Title: _____  Telephone: _____ Date: _____	
<b>FEDERAL USE ONLY:</b>		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

**LOBBYING CERTIFICATION REQUIRED FOR EACH  
APPLICATION EXCEEDING \$100,000**

An Applicant that submits, or intends to submit this fiscal year, an application for Federal assistance exceeding \$100,000 from all Federal sources must provide the following certification. FTA may not provide Federal assistance for an application exceeding \$100,000 until the Applicant provides this certification by selecting Category II on the Signature Page.

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

- A. As required by U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application for a Federal assistance exceeding \$100,000:
- (1) No federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; and
  - (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence 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; and
  - (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 disclosure accordingly.
- B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 13 52. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
Legal Name of Applicant

\_\_\_\_\_  
Signature of Certifying

\_\_\_\_\_  
Official Title

\_\_\_\_\_  
Date:

## DEBARMENT AND SUSPENSION (NONPROCUREMENT)

49 CFR Part 29 Executive Order 12549

### Applicability to Contracts

Executive Order 12549, as implemented by 49 CFR Part 29, prohibits FTA recipients and sub-recipients from contracting for goods and services from organizations that have been suspended or debarred from receiving Federally assisted contracts. As part of their applications each year, recipients are required to submit a certification to the effect that they will not enter into contracts over \$100,000 with suspended or debarred contractors and that they will require their contractors (and their subcontractors) to make the same certification to them.

### Flow Down

Subrecipients are required to pass this requirement on to subcontractors seeking subcontracts over \$100,000. Thus, the terms "lower tier covered participant" and "lower tier covered transaction" include both contractors and subcontractors and contracts and subcontracts over \$100,000.

- (1) The Subrecipients certifies to the best of its knowledge and belief, that it and its principals:
  - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency;
  - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions terminated for cause or default.
- (2) Where the Subrecipient is unable to certify to any of the statements in this certification, such Subrecipient shall attach an explanation to this certification.

---

Signature of Certifying

---

Official Title

---

Date

## LOWER TIER PARTICIPANT DEBARMENT CERTIFICATION

### (Negotiated Contracts)

*(For Sub recipients Contractors Over \$100,000)*

\_\_\_\_\_(insert name of certifying official), being duly sworn or under penalty of perjury under the laws of the United States, certifies that neither \_\_\_\_\_(insert name of lower tier participant), nor its principals are presently:

- debarred, suspended, proposed for debarment,
- declared ineligible,
- or voluntarily excluded from participation in this transaction by any Federal department or agency

Where the above identified lower tier participant is unable to certify to any of the above statements in this certification, such prospective participant shall indicate below to whom the exception applies, the initiating agency, and dates of action.

Exceptions will not necessarily result in denial of award but will be considered in determining contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

EXCEPTIONS:

Signature of Certifying: \_\_\_\_\_

Official Title: \_\_\_\_\_

Date: \_\_\_\_\_

## TEXAS CORPORATE FRANCHISE TAX CERTIFICATION

**PURPOSE:** By state law (Texas Business Corporation Act, Article 2.45), state agencies may not contract with for profit corporations that are delinquent in making state franchise tax payments. The following certification provides a means for establishing whether a corporation is current in its state franchise tax payments.

**INSTRUCTIONS:** The certification must be signed by the individual authorized on Form 2031, Corporate Board of Directors Resolution, to sign the contract for the corporation. (For USDA-funded contracts, use Form 4508, Certification of Authority, to determine who must sign.)

The certification must be newly completed by all corporations and filed with each offer or contract renewal package submitted.

Indicate the certification that applies to your corporation.

\_\_\_\_\_ A. The corporation is a for-profit corporation and certifies that it is not delinquent in its franchise tax payments to the State of Texas.

\_\_\_\_\_ B. The corporation is a non-profit corporation or is otherwise not subject to payment of franchise taxes to the State of Texas.

**The undersigned authorized representative of the corporation certifies by signature that the above statements are true and correct and that it understands making a false certification is a material breach of contract and is grounds for contract Cancellation.**

Name of Corporation (please type or print):

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Name of Corporate Representative:

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Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

**CONFLICT OF INTEREST QUESTIONNAIRE**  
For vendor doing business with local governmental entity

**FORM CIQ**

<p><b>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</b></p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	<p><b>OFFICE USE ONLY</b></p> <hr/> <p>Date Received</p>
<p><b>1 Name of vendor who has a business relationship with local governmental entity.</b></p>	
<p><b>2</b> <input type="checkbox"/> <b>Check this box if you are filing an update to a previously filed questionnaire.</b> (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)</p>	
<p><b>3 Name of local government officer about whom the information is being disclosed.</b></p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Name of Officer</p>	
<p><b>4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.</b></p> <p style="text-align: center; margin-top: 40px;">A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p style="text-align: center;"> <input type="checkbox"/> Yes      <input type="checkbox"/> No         </p> <p style="text-align: center; margin-top: 20px;">B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <p style="text-align: center;"> <input type="checkbox"/> Yes      <input type="checkbox"/> No         </p>	
<p><b>5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.</b></p>	
<p><b>6</b> <input type="checkbox"/> Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).</p>	
<p><b>7</b></p> <p style="text-align: center; margin-top: 20px;">             _____              Signature of vendor doing business with the governmental entity         </p> <p style="text-align: center; margin-top: 20px;">             _____              Date         </p>	

## **CONFLICT OF INTEREST QUESTIONNAIRE**

### **For vendor doing business with local governmental entity**

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

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- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;

or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

This form is to assist subrecipients with managing the federal and state clauses related to the procurement they're interested in completing. This document complies with all pertinent federal and state regulations for each procurement type.

To begin, select the procurement's funding source. If TxDOT is the pass-through entity (Direct Recipient), both Federal and State must be checked.

☒ Federal and State    ☐ State Only

## Federal Clauses – Procurement Types Summary:

### All FTA-Assisted Third-Party Contracts and Subcontracts

1. No Federal Government Obligations to Third Parties
2. Access to Third Party Contract Records
3. Changes to Federal Requirements
4. Civil Rights (EEO, Title VI & ADA)
5. Incorporation of FTA Terms
6. Energy Conservation
7. Trafficking in Persons
8. False or Fraudulent Statements or Claims
9. Disadvantaged Business Enterprises (DBE)
10. Fly America
11. Americans with Disabilities Act (ADA) Access
12. Special Notification Requirements for States
13. Safe Operation of Motor Vehicles
14. Federal Tax Liability and Recent Felony Convictions
15. Program Fraud and False or Fraudulent Statements and Related Acts
16. Prompt Payment
17. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment
18. Conformance with Intelligent Transportation Systems (ITS) National Architecture
19. Severability

#### Award Exceeding \$10,000

20. Terminating the Contract
21. Solid Wastes

#### Award Exceeding \$25,000

22. Debarment and Suspension
23. Resolution of Disputes, Breaches, or Other Litigation

#### ☐ Award Exceeding \$50,000

24. Contracting with the Enemy

#### ☐ Award Exceeding \$100,000

25. Lobbying Restrictions

#### ☒ Award Exceeding \$150,000

26. Environmental Protection (Clean Air and Water Pollution Control)

## **All FTA-ASSISTED THIRD-PARTY CONTRACTS AND SUBCONTRACTS**

## 1. No Federal Government Commitment or Liability to Third Parties

Except as the Federal Government expressly consents in writing, the Recipient agrees that:

- A. The Federal Government does not and shall not have any commitment or liability related to the Underlying Agreement, to any Third-Party Participant at any tier, or to any other person or entity that is not a party (FTA or the Recipient) to the Underlying Agreement; and
- B. Notwithstanding that the Federal Government may have concurred in or approved any Solicitation or Third-Party Agreement at any tier that may affect the Underlying Agreement, the Federal Government does not and shall not have any commitment or liability to any Third-Party Participant or other entity or person that is not a party (FTA or the Recipient) to the Underlying Agreement.

## 2. Access to Third-Party Contract Records

The Recipient agrees to require, and assures that each of its Subrecipients will require, its Third-Party Contractors at each tier to provide:

- A. The U.S. Secretary of Transportation and the Comptroller General of the United States, the state, or their duly authorized representatives, access to all Third-Party Contract records (at any tier) as required under 49 U.S.C. § 5325(g); and
- B. Sufficient access to all Third-Party Contract records (at any tier) as needed for compliance with applicable federal laws, regulations, and requirements or to assure.
- C. The Recipient will retain and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third-party Contracts of any type, and supporting materials related to those records.
- D. The Recipient agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. The Contractor shall maintain all books, records, accounts, and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

## 3. Changes to Federal Requirements

The Recipient agrees to include notice in each Third-Party Agreement that:

- A. Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and
- B. Applicable changes to those federal requirements will apply to each Third-Party Agreement and parties thereto at any tier.

## 4. Civil Rights

The Recipient agrees to apply these Federal Civil Rights laws and regulations apply to all contracts.

- A. Federal Equal Employment Opportunity (EEO) Requirements. These include, but are not limited to: a. Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity. b. Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
- B. Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
- C. Nondiscrimination on the Basis of Age. The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or

## **5. Incorporation of Federal Transit Administration (FTA) Terms**

## **5. Incorporation of Federal Transit Administration (FTA) Terms**

The provisions within include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the current FTA Circular 4220 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 Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

## **6. Energy Conservation**

The Recipient agrees to, and assures that its Subrecipients will, comply with the mandatory energy standards and policies of its

state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. part 622, subpart C.

## **7. Trafficking in Persons**

The contractor agrees that it and its employees that participate in the Recipient's Award, may not:

- A. Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect;
- B. Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or
- C. Use forced labor in the performance of the Recipient's Award or subagreements thereunder.

## **8. False or Fraudulent Statements or Claims**

A. Civil Fraud. The Recipient acknowledges and agrees that:

- I. Federal laws, regulations, and requirements apply to itself and its Underlying Agreement, including the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31.
- II. By executing the Underlying Agreement, the Recipient certifies and affirms to the Federal Government the truthfulness and accuracy of any claim, statement, submission, certification, assurance, affirmation, or representation that the Recipient provides to the Federal Government.
- III. The Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, and other applicable penalties if the Recipient presents, submits, or makes available any false, fictitious, or fraudulent information.

B. Criminal Fraud. The Recipient acknowledges that 49 U.S.C. § 5323(l)(1) authorizes the Federal Government to impose the penalties under 18 U.S.C. § 1001 if the Recipient provides a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation in connection with a federal public transportation program under 49 U.S.C. chapter 53 or any other applicable federal law.

## 9. Disadvantaged Business Enterprises

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 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- A. Withholding monthly progress payments;
- B. Assessing sanctions;
- C. Liquidated damages; and/or
- D. Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. §26.13(b).

In accordance with 49 C.F.R. § 26.29(a), Prime contractors agree to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor using direct federal funds, and no later than 10 days from receipt of payment the recipient makes to the prime contractor using state or federal funds pass-through the Texas Department of Transportation (TxDOT) per TxDOT policy.

Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f)(1).

## 10. Fly America

The recipient agrees to comply with the air transportation requirements of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 – 301-10.143.

## 11. ADA Access

The Recipient agrees to comply with the following federal prohibitions against discrimination based on disability:

- A. Federal laws, including:
  - I. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities;
  - II. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities:
    - a. For FTA Recipients generally, Titles I, II, and III of the ADA apply; but
    - b. For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of "employer;"
  - III. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities;
  - IV. Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and
  - V. Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.

B. Federal regulations and guidance, including:

- I. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37;
- II. U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27;
- III. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38;
- IV. U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39;
- V. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35;
- VI. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36;
- VII. U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630;
- VIII. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, subpart F;
- IX. U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194;
- X. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609;
- XI. FTA Circular 4710.1, "Americans with Disabilities Act: Guidance;" and
- XII. Other applicable federal civil rights and nondiscrimination regulations and guidance.

## 12. Special Notification Requirements for States

- A. Types of Information. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:
- I. The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
  - II. The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
  - III. The amount of federal assistance FTA has provided for a State Program or Project.
- B. Documents. The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

## 13. Safe Operation of Motor Vehicles

### Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or Agency.

### Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

## 14. Federal Tax Liability and Recent Felony Convictions

- A. The contractor certifies that it:
- I. Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the

authority responsible for collecting the tax liability; and

II. Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

*If the contractor cannot so certify, the Recipient will refer the matter to FTA and not enter into any Third-Party Agreement with the Third-Party Participant without FTA's written approval.*

**B. Flow Down**

I. The Recipient agrees to require the contractor to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

**15. Program Fraud and False or Fraudulent Statements and Related Acts**

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**16. Prompt Payment**

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. Per Texas Department of Transportation (TxDOT) policy, the 30-day payment window is reduced to 10-days from receipt of payment when the contractor is using state or federal funds pass-through TxDOT to reimburse subcontractors. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed. The contractor must promptly notify the Agency, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.

**17. Prohibition on certain telecommunications and video surveillance services or equipment**

Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

- A. Procure or obtain;
- B. Extend or renew a contract to procure or obtain; or
- C. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- E. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- D. Telecommunications or video surveillance services provided by such entities or using such equipment.

E. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

#### **18. Conformance with ITS National Architecture**

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

#### **19. Severability**

The Contractor agrees that if any provision of this agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

**Awards Exceeding \$10,000**

## 20. Termination

### **A. Termination for Convenience**

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

### **B. Termination for Default [Breach or Cause]**

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, 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**

The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Agency 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 Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

## 21. Solid Wastes

A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## Awards Exceeding \$25,000

## 22. Debarment and Suspension

The Recipient agrees to the following:

- A. It will comply with the following requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200.
- B. It will not enter into any "covered transaction" (as that phrase is defined at 2 C.F.R. §§ 180.220 and 1200.220) with any Third-

Party Participant that is, or whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions, except as authorized by—

- I. U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200;
  - II. U.S. OMB regulatory guidance, “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180; and
  - III. Other applicable federal laws, regulations, or requirements regarding participation with debarred or suspended Recipients or Third-Party Participants.
- C. It will review the U.S. GSA “System for Award Management – Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs,” if required by U.S. DOT regulations, 2 C.F.R. part 1200.
- D. It will ensure that its Third-Party Agreements contain provisions necessary to flow down these suspension and debarment provisions to all lower tier covered transactions.
- E. If the Recipient suspends, debars, or takes any similar action against a Third-Party Participant or individual, the Recipient will provide immediate written notice to the:
- I. FTA Regional Counsel for the Region in which the Recipient is located or implements the Underlying Agreement;
  - II. FTA Headquarters Manager that administers the Grant or Cooperative Agreement; or
  - III. FTA Chief Counsel.

## **23. Resolution of Disputes, Breaches, or Other Litigation**

### **A. FTA Interest**

FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.

### **B. Notification to FTA; Flow Down Requirement**

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third-Party Agreements and must require each Third-Party Participant to include an equivalent provision in its sub-agreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- I. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- II. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
- III. Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, “promptly” means to refer information without delay and without change. This notification

provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

### **C. Federal Interest in Recovery**

The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA's prior written concurrence.

### **D. Enforcement**

The Recipient must pursue its legal rights and remedies available under any Third-Party Agreement or any federal, state, or local law or regulation.

### **E. Agency Process**

\*Vendors may view the dispute resolution process here:

See extracted section of the SETRPC Procurement Policy regarding the dispute resolution process attached to the end of this form.

## **Awards Exceeding \$50,000**

### **24. Never Contract with the Enemy**

The Recipient agrees to the regulations implementing Never Contract with the Enemy in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered contracts, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

## **Awards Exceeding \$100,000**

## 25. Lobbying Restrictions.

The Recipient agrees that neither it nor any Third-Party Participant will use federal assistance to influence any officer or employee of a federal agency, member of Congress or an employee of a member of Congress, or officer or employee of Congress on matters that involve the Underlying Agreement, including any extension or modification, according to the following:

**A. Laws, Regulations, Requirements, and Guidance.** This includes:

- I. The Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended;
- II. U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. part 20, to the extent consistent with 31 U.S.C. § 1352, as amended; and
- III. Other applicable federal laws, regulations, requirements, and guidance prohibiting the use of federal assistance for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature; and

**B. Exception.** If permitted by applicable federal law, regulations, requirements, or guidance, such lobbying activities described above may be undertaken through the Recipient's or Subrecipient's proper official channels.

**C. Political Activity.** The Recipient agrees to comply with:

- I. The Hatch Act, 5 U.S.C. chapter 15, which limits the political activities of state and local government agencies supported in whole or in part with federal assistance, including the political activities of state and local government officers and employees whose principal governmental employment activities are supported in whole or in part with federal assistance;
- II. U.S. Office of Personnel Management regulations, "Political Activity of State or Local Officers or Employees," 5 C.F.R. part 151; and
- III. 49 U.S.C. § 5323(l)(2) and 23 U.S.C. § 142(g), which limits the applicability of the Hatch Act, as follows:
  - a. The Hatch Act does not apply to nonsupervisory employees of a public transportation system, or any other agency or entity performing related functions, based upon the Award of federal assistance under 49 U.S.C. chapter 53 or 23 U.S.C. § 142(a)(2); but
  - b. Notwithstanding the preceding section 4(e)(3)(ii) of this Master Agreement, the Hatch Act does apply to a nonsupervisory employee if imposed for a reason other than the Award of federal assistance to its employer under 49 U.S.C. chapter 53 or 23 U.S.C. § 142(a)(2).

**D. Lobbying and Disclosure Certification**

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

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

<b>Name of Company</b>	<b>Printed Name of Person Completing Form</b>
<b>Date</b>	<b>Signature</b>

## Awards Exceeding \$150,000

### 26. Environmental Protection (Clean Air and Clean Water)

The Recipient agrees to comply with the regulations within the Clean Air Act (42 U.S.C. §§ 7401 - 7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 - 1388), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401 - 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251 - 1388). Violations must be reported to the 64 Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

## State of Texas Procurement Contract Clauses

### State of Texas - Procurement Types Summary:

#### All Texas-Assisted Third-Party Contracts and Subcontracts

1. Debarment
2. Family Code Child Support Obligation Certification
3. Debts and Delinquencies Affirmations
4. Disaster Recovery Plan
5. Disclosure of Prior State Employment
6. Entities that Boycott Israel
7. Federal Executive Order 13224 Excluded Parties
8. False Statements
9. Financial Participation Prohibited Affirmation
10. Foreign Terrorist Organizations
11. Disaster Relief Contract Violation
12. Public Information Act
13. Signature Authority
14. State Auditor's Right to Audit
15. Suspension and Debarment
16. Assignment
17. Contracting Information Responsibilities
18. Human Trafficking Prohibition
19. Energy Company Boycotts
20. Firearm Entities and Trade Association Discrimination

## **1. 34 TAC §20.585 Debarment**

The Recipient agrees that The State of Texas, in order to protect the interests of the state may:

- A. Conduct an investigation upon a complaint regarding a contractor's acts and omissions in procurement or performance of that contract where the complaint may constitute cause for debarment;
- B. Cancel one or more of the contractor's active or pending contracts upon a complaint regarding the contractor's acts and omissions in procurement or performance of that contract where the complaint may constitute cause for debarment;
- C. Assess actual damages and costs incurred due to contractor's failure to perform as specified in the contract;
- D. Debar a contractor for a specified period of time; and
- E. Take any other action authorized by law.

## **2. §231.006 Family Code Child Support Obligation Certification**

Under Section 231.006(d) of the Texas Family Code, the Sub-recipient certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified GRANT and acknowledges that this Agreement may be terminated and payment or grant funds may be withheld if this certification is inaccurate.

## **3. §2252.903 Gov't Code Debts and Delinquencies Affirmations**

Sub-recipient agrees that any payments due it under the Agreement shall be applied toward any debt or delinquency that is owed to the State of Texas.

## **4. §444.190 Gov't Code Disaster Recovery Plan**

In accordance with 13 TAC (Texas Administrative Code) §6.94(a)(9), Sub-recipient shall provide descriptions of its business continuity and disaster recovery plans

## **5. §2254.033 Gov't Code Disclosure of Prior State Employment**

In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, RESPONDENT certifies that it does not employ an individual who has been employed by TxDOT or another agency at any time during the two years preceding the submission of the Response or, in the alternative, RESPONDENT has disclosed in its Response the following:

- A. The nature of the previous employment with TxDOT or the other agency;
- B. The date the employment was terminated; and
- C. The annual rate of compensation for the employment at the time of its termination.

## **6. §2271.001 Gov't Code Entities that Boycott Israel**

Pursuant to Section 2271.001 of the Texas Government Code, Sub-recipient certifies that either:

- A. It meets an exception criterion under Section 2271.002, or
- B. It does not boycott Israel and will not boycott Israel during the term of this Agreement. Sub-recipient shall in a writing to TxDOT state any fact(s) that make it exempt from the boycott certification.

## **7. Federal Executive Order 13224 Excluded Parties**

Sub-recipient certifies that it is not listed on the prohibited vendors list authorized by Executive Order 13224, Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.

## **8. §2155.077(a)(2) Gov't Code False Statements**

Sub-recipient represents and warrants that all statements and information prepared and submitted in this document are current, complete, true and accurate. Submitting a false statement or material misrepresentation made during the performance of a contract is a material breach of contract and may void this agreement.

**9. §2155.004 Gov't Code Financial Participation Prohibited Affirmation**

Under Section 2155.004(b) of the Texas Government Code, Sub-recipient certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified agreement/GRANT and acknowledges that this agreement may be terminated, and payment withheld if this certification is inaccurate.

**10. §2252.152 Gov't Code Foreign Terrorist Organizations**

Sub-recipient represents and warrants that is not engaged in business with Iran, Sudan, or a foreign terrorist organization as prohibited by Section 2252.152 of the Texas Government Code.

**11. §2155.006 and 2261.053 Gov't Code Prior Disaster Relief Contract Violation**

Under Sections 2155.006 and 2261.053 of the Texas Government Code, the Sub-recipient certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified agreement/GRANT and acknowledges that this agreement may be terminated and payment withheld if this certification is inaccurate.

**12. Chapter 552, Gov't Code and §2252.907 Gov't Code Public Information Act**

Information, documentation, and other material in connection with this Agreement may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). In accordance with Section 2252.907 of the Texas Government Code, the Sub-recipient is required to make any information created or exchanged with the State pursuant to the Agreement and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

**13. §2252.0012 Gov't Code Signature Authority**

The Sub-recipient represents and warrants that the individual executing this Agreement is authorized to sign this Agreement on behalf of the Sub-recipient and to bind the Sub-recipient.

**14. §2262.154 Gov't Code State Auditor's Right to Audit**

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. The acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

**15. §2155.077 Gov't Code Suspension and Debarment**

Sub-recipient certifies that it and its principals are not suspended or debarred from doing business with the State of Texas or federal government as listed on the State of Texas Debarred Vendor List as maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.

**16. §2262.056 (b) Gov't Code Assignment**

Sub-recipient shall not assign its rights under the Agreement or delegate the performance of its duties under the Agreement without prior written approval from the TxDOT. Any attempted assignment in violation of this provision is void and without effect.

**17. §552.372 Gov't Code Contracting Information Responsibilities**

In accordance with Section 552.372 of the Texas Government Code, Sub-recipient agrees to:

- A. preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to TxDOT for the duration of the Agreement,
- B. promptly provide to TxDOT any contracting information related to the Agreement that is in the custody or possession of the Sub-recipient on request of TxDOT, and
- C. on termination or expiration of the contract, either provide at no cost to TxDOT all contracting information related to the Agreement that is in the custody or possession of the Sub-recipient or preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to TxDOT. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code, may apply to the Agreement and the Sub-recipient agrees that the Agreement can be terminated if the Sub-recipient knowingly or intentionally fails to comply with a requirement of that subchapter.

**18. §2155.0061 Gov't Code Human Trafficking Prohibition**

**18. §2155.0061 Gov't Code Human Trafficking Prohibition**

Under Section 2155.0061 of the Texas Government Code, the Sub-recipient certifies that the individual or business entity named in the Agreement is not ineligible to receive the specified Agreement/GRANT and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

**19. §2274.002 Energy Company Boycotts**

If Respondent is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Respondent verifies that Respondent does not boycott energy companies and will not boycott energy companies during the term of the Contract. If Respondent does not make that verification, Respondent must so indicate in its Response and state why the verification is not required.

**20. §2274 Firearm Entities and Trade Association Discrimination**

If Respondent is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Respondent verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. If Respondent does not make that verification, Respondent must so indicate in its Response and state why the verification is not required.

**21. §2252.908, 2254.032, 2261.252(b) No Conflict of Interest**

Respondent represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

### Certification to Purchaser

1. The undersigned vendor certifies that the manufactured good(s) furnished will meet or exceed the specifications, and/or that services rendered will comply with the terms of the solicitation or contract.
2. The undersigned vendor certifies that it has read all of the bid, proposal, or contract documents and agrees to abide by the terms, certifications, and conditions thereof.

**Name of Company:**

**Address:**

**Telephone:**

**SS# or Tax ID#:**

**Printed Name of Person Completing Form:**

**Signature**

**Date:**

**Description of Commodity Service:**

#### Disadvantaged Business Enterprise Information

Type of Organization (check the application type of organization)

☐ Sole Proprietorship    ☐ General Proprietorship    ☐ Corporation    ☐ Limited Partnership    ☐ Limited Proprietorship

Is your firm a DBE?    ☐ Yes    ☐ No

**If yes, what type?**

## Third Party Procurement Contract Provisions

### Third Party Procurement Contracting Provisions

Select the additional third-party procurement contracting provisions based on the type of solicitation you're procuring:

*\*Procurements cannot be combined. Example: Construction procurement and Rolling Stock procurement, use separate PTN 130s for each.*

- ☐ **1. Construction Related Clauses**
  - ☐ Federal and State
  - ☐ State Clauses
  
- ☐ **2. Rolling Stock Related Clauses**
  - ☐ Federal and State
  - ☐ State Clauses
  
- ☒ **3. Professional Services / Architectural Engineering**
  - ☒ Federal and State
  - ☐ State Clauses
  
- ☐ **4. Materials & Supplies Related Clauses**
  - ☐ Federal and State
  - ☐ State Clauses
  
- ☐ **5. Operations / Management Related Clauses**
  - ☐ Federal and State
  - ☐ State Clauses

### 3a. Federal Professional Services Architectural & Engineering Related Clauses

A. Rights in Data and Copyrights (R&D)

B. Patent Rights and Rights in Data

C. Termination Clause: (Select One)

☒ Termination for Convenience or Default (Architect and Engineering)

☐ Termination for Convenience (Professional or Transit Service Contracts)

☒ For Architectural and Engineering

## A. Rights in Data and Copyrights

- I. Definition of "Subject Data." As used in this section, "subject data" means recorded information, whether or not copyrighted, that is delivered or specified to be delivered as required by the Underlying Agreement. Examples of subject data include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Underlying Agreement.
- II. General Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the Underlying Agreement:
  - a. Prohibitions. The Recipient may not publish or reproduce any subject data, in whole, in part, or in any manner or form, or permit others to do so.
  - b. Exceptions. The prohibitions do not apply to publications or reproductions for the Recipient's own internal use, an institution of higher learning, the portion of subject data that the Federal Government has previously released or approved for release to the public, or the portion of data that has the Federal Government's prior written consent for release.
- III. Federal Rights in Data and Copyrights. The Recipient agrees that:
  - a. General. It must provide a license to its subject data to the Federal Government that is royalty-free, non-exclusive, and irrevocable. The Federal Government's license must permit the Federal Government to reproduce, publish, or otherwise use the subject data or permit other entities or individuals to use the subject data provided those actions are taken for Federal Government purposes; and
  - b. U.S. DOT Public Access Plan – Copyright License. The Recipient grants to U.S. DOT a worldwide, non-exclusive, non-transferable, paid-up, royalty free copyright license, including all rights under copyright, to any and all Publications and Digital Data Sets as such terms are defined in the U.S. DOT Public Access plan, resulting from scientific research funded either fully or partially by this funding agreement. The Recipient herein acknowledges that the above copyright license grant is first in time to any and all other grants of a copyright license to such Publications and/or Digital Data Sets, and that U.S. DOT shall have priority over any other claim of exclusive copyright to the same.
- IV. Special Federal Rights in Data for Research, Development, Demonstration, Deployment, Technical Assistance, and Special Studies Programs. In general, FTA's purpose in providing federal assistance for a research, development, demonstration, deployment, technical assistance, or special studies program is to increase transportation knowledge, rather than limit the benefits of the Award to the Recipient and its Third-Party Participants. Therefore, the Recipient agrees that:
  - a. Publicly Available Report. When an Award providing federal assistance for any of the programs described above is completed, it must provide a report of the Underlying Agreement that FTA may publish or make available for publication on the Internet.
  - b. Other Reports. It must provide other reports related to the Award that FTA may request.
  - c. Availability of Subject Data. FTA may make available its copyright license to the subject data, and a copy of the subject data to any FTA Recipient or any Third-Party Participant at any tier, except as the Federal Government determines otherwise in writing.
  - d. Identification of Information. It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA
  - e. Incomplete. If the Award is not completed for any reason whatsoever, all data developed with federal assistance for the Award becomes subject data and must be delivered as the Federal Government may direct.

- f. Exception. This section does not apply to an adaptation of any automatic data processing equipment or program that is both for the Recipient's use and acquired with FTA capital program assistance.
- V. License Fees and Royalties. Consistent with the applicable U.S. DOT Common Rules, the Recipient agrees that license fees and royalties for patents, patent applications, and inventions produced with federal assistance provided through the Underlying Agreement are program income and must be used in compliance with federal applicable requirements.
- VI. Hold Harmless. Upon request by the Federal Government, the Recipient agrees that if it intentionally violates any proprietary rights, copyrights, or right of privacy, and if its violation under the preceding section occurs from any of the publication, translation, reproduction, delivery, use or disposition of subject data, then it will indemnify, save, and hold harmless the Federal Government against any liability, including costs and expenses of the Federal Government's officers, employees, and agents acting within the scope of their official duties. The Recipient will not be required to indemnify the Federal Government for any liability described in the preceding sentence, if the violation is caused by the wrongful acts of federal officers, employees or agents, or if indemnification is prohibited or limited by applicable state law.
- VII. Restrictions on Access to Patent Rights. Nothing in this section of this Master Agreement pertaining to rights in data either implies a license to the Federal Government under any patent or may be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.
- VIII. Data Developed Without Federal Assistance or Support. The Recipient agrees that in certain circumstances it may need to provide to FTA data developed without any federal assistance or support. Nevertheless, this section generally does not apply to data developed without federal assistance, even though that data may have been used in connection with the Award. The Recipient agrees that the Federal Government will not be able to protect data developed without federal assistance from unauthorized disclosure unless that data is clearly marked "Proprietary," or "Confidential."
- IX. Requirements to Release Data. The Recipient understands and agrees that the Federal Government may be required to release data and information that the Recipient submits to the Federal Government as required under:
- a. The Freedom of Information Act (FOIA), 5 U.S.C. § 552;
  - b. The U.S. DOT Common Rules;
  - c. The U.S. DOT Public Access Plan, which provides that the Recipient agrees to satisfy the reporting and compliance requirements as set forth in the U.S. DOT Public Access plan, including, but not limited to, the submission and approval of a Data Management Plan, the use of Open Researcher and Contributor ID (ORCID) numbers, the creation and maintenance of a Research Project record in the Transportation Research Board's (TRB) Research in Progress (RiP) database, and the timely and complete submission of all required publications and associated digital data sets as such terms are defined in the DOT Public Access plan. Additional information about how to comply with the requirements can be found at <http://ntl.bts.gov/publicaccess/howtocomply.html>; or
  - d. Other federal laws, regulations, requirements, and guidance concerning access to records pertaining to the Award, the accompanying Underlying Agreement, and any Amendments thereto.

## **B. Patent Rights and Rights in Data**

### *Intellectual Property Rights*

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the Agency intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT.

The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions:

Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA 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.

For purposes of this Contract, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable licenses to reproduce, publish, or otherwise use,

### Termination for Convenience or Default (Architect and Engineering)

#### Termination for Convenience or Default (Architect and Engineering)

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency 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 Agency's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the Agency, the Agency's 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 Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency. 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 Agency.

#### Professional Services / A&E Certification

The undersigned vendor certifies to abide by these clauses and include the following clauses in each subcontract financed in whole or in part with Federal Transit Administration (FTA) funds. Vendors are certifying by reference the entire list FTA's current fiscal year Certifications and Assurances (for fiscal year 2024 ), and shall download at:

<https://www.transit.dot.gov/funding/grantee-resources/certifications-and-assurances/certifications-assurances>.

Name of Company	Printed Name of Person Completing Form
Date	Signature

### 3b. State of Texas Required Clauses: A&E

- A. Buy Texas Affirmation
- B. RP8 E-Verify Program
- C. Anti-Trust Affirmation

- D. Standard of Care for Architectural and Engineering Contracts
- E. Code Indemnification
- F. Dispute Resolution Contract for Professional Services of Architect, Engineer, or Surveyor
- G. Professional Services Procurement Act

**A. §2155.4441 Gov't Code Buy Texas Affirmation**

In accordance with Section 2155.4441 of the Texas Government Code, Sub-recipient agrees that during the performance of a contract for services it shall purchase products and material produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.

**B. Executive Order No. RP8 E-Verify Program**

Sub-recipient certifies that for contracts for services, Sub-recipient shall utilize the U.S Department of Homeland Security's E-Verify system during the term of the agreement to determine the eligibility of:

- I. All persons employed by the Sub-recipient to perform duties within Texas; and
- II. All persons, including subcontractors, assigned by the Sub-recipient to perform work pursuant to the Agreement within the United States of America.

**C. §2155.005 Texas Government Code Anti-Trust Affirmation**

The undersigned affirms under penalty of perjury of the laws of the State of Texas that

- I. In connection with this Response, neither I nor any representative of the Respondent have violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;
- II. In connection with this Response, neither I nor any representative of the Respondent have violated any federal antitrust law; and
- III. Neither I nor any representative of the Respondent have directly or indirectly communicated any of the contents of this Response to a competitor of the Respondent or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Respondent.

**D. §2254.0031 Gov't Code and §271.904(a)-(e) and (g) Tex Local Gov't Code Standard of Care for Architectural and Engineering Contracts**

Pursuant to Section 2254.0031 of the Texas Government Code, which incorporates by reference Section 271.904(d) of the Texas Local Government Code, Sub-recipient shall perform services

- I. With professional skill and care ordinarily provided by competent engineer or architect practicing under the same or similar circumstances and professional license, and
- II. As expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

**E. §2254.0031 Gov't Code and §271.904 (a)-(e) and (g) Tex Local Govt Code Indemnification**

Sub-recipient shall indemnify and hold harmless the State of Texas and TxDOT, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from any and all liability, actions, claims, demands, or suits and all related damages, costs, attorneys fees, and expense to the extent caused by, arising out of, or resulting from any acts of negligence, intentional torts, willful misconduct, personal injury, or damage to property, and/or otherwise related to Sub-recipient's performance and/or failures to pay a subcontractor or supplier by the Sub-recipient or its agents, employees, subcontractors, order fulfillers, consultants under contract to sub-recipient, or any other entity over which the contractor exercises control, or suppliers of sub-contractors in the execution or performance of the Agreement. The defense shall be coordinated by Sub-recipient with the Office of the Texas Attorney General when Texas state agencies are named defendants in any lawsuit and Sub-recipient may not agree to any settlement without first obtaining the concurrence from the Office of the Texas Attorney General. Sub-recipient and TxDOT agree to furnish timely written notice to each other of any such claim.

**F. §2254.004 Gov't Code Dispute Resolution Contract for Professional Services of Architect, Engineer, or Surveyor**

The Recipient will comply with Texas Government Code, Section 2260.002, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and set forth below in subsections (a)-(d) shall be used by the parties to attempt to resolve all disputes arising under the agreement. In accordance with the Texas Civil Practice and Remedies Code, Section 114.005, the parties agree claims encompassed by Texas Government Code, Section 2260.002(3) and Texas Civil Practice and Remedies Code Section 114.002 shall be governed by the dispute resolution process set forth below in subsections (a)-(d).

- I. Notwithstanding Texas Government Code Chapter 2260.002 (3) and Chapter 114.12 and any other statute or applicable law, if the Sub-recipient's claim for breach of contract cannot be resolved by the parties in the ordinary course of business, Sub-recipient may make a claim against Agency for breach of contract and the Agency may assert a counterclaim against Sub-recipient as is contemplated by Texas Government Code Chapter 2260, Subchapter B. In such event, Sub-recipient must provide written notice to Agency of a claim for breach of the agreement not later than the 180th day after the date of the event giving rise to the claim. The notice must state with particularity:
  - a. the nature of the alleged breach;
  - b. the amount the Sub-recipient seeks as damages; and
  - c. the legal theory of recovery.
- II. The chief administrative officer, or if designated in the Agreement another officer of TxDOT, shall examine the claim and any counterclaim and negotiate with Sub-recipient in an effort to resolve them. The negotiation must begin no later than the 120th day after the date the claim is received, as is contemplated by Texas Government Code, Chapter 2260, Section 2260.052.
- III. If the negotiation under paragraph. Above results in the resolution of some disputed issues by agreement or in a settlement, the parties shall reduce the agreement or settlement to writing and each party shall sign the agreement or settlement. A partial settlement or resolution of a claim does not waive a party's rights under this Agreement as to the parts of the claim that are not resolved.
- IV. If a claim is not entirely resolved under paragraph (b) above, on or before the 270th day after the date the claim is filed with TxDOT, unless the parties agree in writing to an extension of time, the parties may agree to mediate a claim made under this dispute resolution procedure. This dispute resolution procedure is Sub-provider's sole and exclusive process for seeking a remedy or an alleged breach of contract by TxDOT if the parties are unable to resolve their dispute as described in this section.
- V. Nothing in this Agreement shall be construed as a waiver of the state's or TxDOT's sovereign immunity. This Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities, or be considered as a basis for estoppel. TxDOT does not waive any privileges, rights, defenses, or immunities available to TxDOT by entering into this Agreement or by its conduct or by the conduct of any representatives of TxDOT, prior to or subsequent to entering into this Agreement.
- VI. Compliance with the dispute resolution process provided for in Texas Government Code, Chapter 2260, subchapter B and incorporated by reference in subsection (a)-(d) above is a condition precedent to the Sub-recipient:
  - a. filing suit pursuant to Chapter 114 of the Civil Practice and Remedies Code; or
  - b. initiating a contested case hearing pursuant to subchapter C of Chapter 2260 of the Texas Government Code.

**G. §2254.004 Gov't Code Professional Services Procurement Act**

In procuring architectural or engineering services, a government entity shall:

- I. First select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and then attempt to negotiate with that provider a contract.

### Professional Services / A&E Certification

The undersigned vendor certifies to abide by these clauses and include the following clauses in each subcontract financed in whole or in part with State of Texas funds.

Name of Company	Printed Name of Person Completing Form
Date	Signature

# RESOLUTION OF PROTESTED PROCUREMENTS

## Procedure:

Any actual or prospective Bidder/Offeror who is aggrieved in connection with a purchase transaction may file a grievance. The grievance may be filed at any phase of the procurement.

In order for an above mentioned party to enter the grievance process, a written complaint must be sent to the procurement contact person by certified mail within seven calendar days which identifies the following:

- Name, mailing address and business phone number of the complaint.
- Appropriate identification of the procurement being questioned.
- A precise statement of reasons for the protest.
- Supporting exhibits, evidence or documents to substantiate any claims

The grievance must be based on an alleged violation of SETRPC's Procurement Procedures, a violation of State or Federal law (if applicable), or contract agreements to which SETRPC is a party. Failure to receive a procurement award from SETRPC in and of itself does not constitute a valid grievance. Upon receipt of a grievance, the procurement contact person will initiate the expedited resolution process.

## Expedited Resolution:

The Department Director responsible for the solicitation shall contact the complainant and all interested parties and attempt to resolve the allegations informally within ten (10) working days from date of complaint. If the allegations are successfully resolved by mutual agreement, documentation will be placed in the procurement file explaining the resolution with specifics on each point addressed in the original complaint.

If the Department Director or designee is not successful in resolving the allegations, the complaint along with the comments will be forwarded to the Executive Director immediately. The Executive Director will assign an impartial third party (mediator) to review all documentation. All interested parties will be given written notice of the date, time, and place of the hearing and an opportunity to present evidence. A written decision will be issued within five (5) working days after the hearing along with a notice of appeal rights.

## Appeals:

The complainant may appeal the mediator's decision by submitting a written appeal within five (5) working days, to the Executive Director of SETRPC. The Executive Director, upon receipt of a written notice of appeal, shall contact the complainant and schedule a second hearing within ten (10) working days.

The decision reached by the Executive Director in the second hearing shall be final. This decision will be forwarded to the complainant in writing within thirty (30) working days.

Appeals of SETRPC decisions to a grantor agency are limited to violations of federal law or regulations and the standards of Section \_\_.36 of the Uniform Administration Requirements for Grants and Cooperative Agreements to State and Local Governments; and violations of SETRPC's protest procedures for failure to review a complaint or protest.

*Not every provision of every certification will apply to every applicant or award. If a provision of a certification does not apply to the applicant or its award, FTA will not enforce that provision.*

*Text in italic is guidance to the public. It does not have the force and effect of law, and is not meant to bind the public in any way. It is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.*

## **CATEGORY 1. CERTIFICATIONS AND ASSURANCES REQUIRED OF EVERY APPLICANT.**

*All applicants must make the certifications in this category.*

### **1.1. Standard Assurances.**

*The certifications in this subcategory appear as part of the applicant's registration or annual registration renewal in the System for Award Management (SAM.gov) and on the Office of Management and Budget's standard form 424B "Assurances—Non-Construction Programs". This certification has been modified in places to include analogous certifications required by U.S. DOT statutes or regulations.*

As the duly authorized representative of the applicant, you certify that the applicant:

- (a) Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
- (b) Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
- (c) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
- (d) Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
- (e) Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

- (f) Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to:
- (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin, as effectuated by U.S. DOT regulation 49 CFR Part 21;
  - (2) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex, as effectuated by U.S. DOT regulation 49 CFR Part 25;
  - (3) Section 5332 of the Federal Transit Law (49 U.S.C. § 5332), which prohibits any person being excluded from participating in, denied a benefit of, or discriminated against under, a project, program, or activity receiving financial assistance from FTA because of race, color, religion, national origin, sex, disability, or age.
  - (4) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps, as effectuated by U.S. DOT regulation 49 CFR Part 27;
  - (5) The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age;
  - (6) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
  - (7) The comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
  - (8) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
  - (9) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing;
  - (10) Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and,
  - (11) the requirements of any other nondiscrimination statute(s) which may apply to the application.
- (g) Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (“Uniform Act”) (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases. The requirements of the Uniform Act are effectuated by U.S. DOT regulation 49 CFR Part 24.

- (h) Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
- (i) Will comply, as applicable, with the provisions of the Davis–Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.
- (j) Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
- (k) Will comply with environmental standards which may be prescribed pursuant to the following:
  - (1) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514;
  - (2) Notification of violating facilities pursuant to EO 11738;
  - (3) Protection of wetlands pursuant to EO 11990;
  - (4) Evaluation of flood hazards in floodplains in accordance with EO 11988;
  - (5) Assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.);
  - (6) Conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.);
  - (7) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and
  - (8) Protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).
- (l) Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
- (m) Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a-1 et seq.).
- (n) Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
- (o) Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§ 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded

animals held for research, teaching, or other activities supported by this award of assistance.

- (p) Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
- (q) Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and 2 CFR Part 200, Subpart F, “Audit Requirements”, as adopted and implemented by U.S. DOT at 2 CFR Part 1201.
- (r) Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the program under which it is applying for assistance.
- (s) Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. § 7104) which prohibits grant award recipients or a subrecipient from:
  - (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect;
  - (2) Procuring a commercial sex act during the period of time that the award is in effect; or
  - (3) Using forced labor in the performance of the award or subawards under the award.

## **1.2. Standard Assurances: Additional Assurances for Construction Projects.**

*This certification appears on the Office of Management and Budget’s standard form 424D “Assurances—Construction Programs” and applies specifically to federally assisted projects for construction. This certification has been modified in places to include analogous certifications required by U.S. DOT statutes or regulations.*

As the duly authorized representative of the applicant, you certify that the applicant:

- (a) Will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency; will record the Federal awarding agency directives; and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.
- (b) Will comply with the requirements of the assistance awarding agency with regard to the drafting, review, and approval of construction plans and specifications.
- (c) Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work confirms with the approved plans and specifications, and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.

### **1.3. Procurement.**

*The Uniform Administrative Requirements, 2 CFR § 200.325, allow a recipient to self-certify that its procurement system complies with Federal requirements, in lieu of submitting to certain pre-procurement reviews.*

The applicant certifies that its procurement system complies with:

- (a) U.S. DOT regulations, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 1201, which incorporates by reference U.S. OMB regulatory guidance, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 200, particularly 2 CFR §§ 200.317–200.327 “Procurement Standards;
- (b) Federal laws, regulations, and requirements applicable to FTA procurements; and
- (c) The latest edition of FTA Circular 4220.1 and other applicable Federal guidance.

### **1.4. Suspension and Debarment.**

*Pursuant to Executive Order 12549, as implemented at 2 CFR Parts 180 and 1200, prior to entering into a covered transaction with an applicant, FTA must determine whether the applicant is excluded from participating in covered non-procurement transactions. For this purpose, FTA is authorized to collect a certification from each applicant regarding the applicant’s exclusion status. 2 CFR § 180.300. Additionally, each applicant must disclose any information required by 2 CFR § 180.335 about the applicant and the applicant’s principals prior to entering into an award agreement with FTA. This certification serves both purposes.*

The applicant certifies, to the best of its knowledge and belief, that the applicant and each of its principals:

- (a) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily or involuntarily excluded from covered transactions by any Federal department or agency;
- (b) Has not, within the preceding three years, been convicted of or had a civil judgment rendered against him or her for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or commission of any other offense indicating a lack of business integrity or business honesty;

- (c) Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any offense described in paragraph (b) of this certification;
- (d) Has not, within the preceding three years, had one or more public transactions (Federal, State, or local) terminated for cause or default.

**1.5. Coronavirus Response and Relief Supplemental Appropriations Act, 2021, and CARES Act Funding.**

The applicant certifies:

- (a) To the maximum extent possible, funds made available under title IV of division M of the Consolidated Appropriations Act, 2021 (Public Law 116–260), and in title XII of division B of the CARES Act (Public Law 116–136; 134 Stat. 599) shall be directed to payroll and operations of public transit (including payroll and expenses of private providers of public transportation); or
- (b) The applicant certifies that the applicant has not furloughed any employees.

**1.6. American Rescue Plan Act Funding.**

The applicant certifies:

- (a) Funds made available by Section 3401(a)(2)(A) of the American Rescue Plan Act of 2021 (Public Law 117-2) shall be directed to payroll and operations of public transportation (including payroll and expenses of private providers of public transportation); or
- (b) The applicant certifies that the applicant has not furloughed any employees.

**CATEGORY 2. PUBLIC TRANSPORTATION AGENCY SAFETY PLANS**

*This certification is required of each applicant under the Urbanized Area Formula Grants Program (49 U.S.C. § 5307), each rail operator that is subject to FTA’s state safety oversight programs, and each State that is required to draft and certify a Public Transportation Agency Safety Plan on behalf of a Small Public Transportation Provider (as that term is defined at 49 CFR § 673.5) pursuant to 49 CFR § 673.11(d).*

*This certification is required by 49 U.S.C. § 5307(c)(1)(L), 49 U.S.C. § 5329(d)(1), and 49 CFR § 673.13. This certification is a condition of receipt of Urbanized Area Formula Grants Program (49 U.S.C. § 5307) funding.*

*This certification does not apply to any applicant that only receives financial assistance from FTA under the Formula Grants for the Enhanced Mobility of Seniors Program (49 U.S.C.*

*§ 5310), the Formula Grants for Rural Areas Program (49 U.S.C. § 5311), or combination of these two programs, unless it operates a rail fixed guideway public transportation system.*

If the applicant is an operator, the applicant certifies that it has established a Public Transportation Agency Safety Plan meeting the requirements of 49 U.S.C. § 5329(d)(1) and 49 CFR Part 673; including, specifically, that the board of directors (or equivalent entity) of the applicant has approved, or, in the case of an applicant that will apply for assistance under 49 U.S.C. § 5307 that is serving an urbanized area with a population of 200,000 or more, the safety committee of the entity established under 49 U.S.C. § 5329(d)(5), followed by the board of directors (or equivalent entity) of the applicant has approved, the Public Transportation Agency Safety Plan or any updates thereto; and, for each recipient serving an urbanized area with a population of fewer than 200,000, that the Public Transportation Agency Safety Plan has been developed in cooperation with frontline employee representatives.

If the applicant is a State that drafts and certifies a Public Transportation Agency Safety Plan on behalf of a public transportation operator, the applicant certifies that:

- (a) It has drafted and certified a Public Transportation Agency Safety Plan meeting the requirements of 49 U.S.C. § 5329(d)(1) and 49 CFR Part 673 for each Small Public Transportation Provider (as that term is defined at 49 CFR § 673.5) in the State, unless the Small Public Transportation Provider provided notification to the State that it was opting out of the State-drafted plan and drafting its own Public Transportation Agency Safety Plan; and
- (b) Each Small Public Transportation Provider within the State that opts to use a State-drafted Public Transportation Agency Safety Plan has a plan that has been approved by the provider's Accountable Executive (as that term is defined at 49 CFR § 673.5), Board of Directors or Equivalent Authority (as that term is defined at 49 CFR § 673.5), and, if the Small Public Transportation Provider serves an urbanized area with a population of 200,000 or more, the safety committee of the Small Public Transportation Provider established under 49 U.S.C. § 5329(d)(5).

### **CATEGORY 3. TAX LIABILITY AND FELONY CONVICTIONS.**

*If the applicant is a business association (regardless of for-profit, not for-profit, or tax exempt status), it must make this certification. Federal appropriations acts since at least 2014 have prohibited FTA from using funds to enter into an agreement with any corporation that has unpaid Federal tax liabilities or recent felony convictions without first considering the corporation for debarment. E.g., Consolidated Appropriations Act, 2023, Pub. L. 117-328, div. E, tit. VII, §§ 744–745. U.S. DOT Order 4200.6 defines a “corporation” as “any private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association”, and applies the restriction to all tiers of subawards. As prescribed by U.S. DOT*

*Order 4200.6, FTA requires each business association applicant to certify as to its tax and felony status.*

If the applicant is a private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association, the applicant certifies that:

- (a) It has no unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- (b) It has not been convicted of a felony criminal violation under any Federal law within the preceding 24 months.

#### **CATEGORY 4. LOBBYING.**

*If the applicant will apply for a grant or cooperative agreement exceeding \$100,000, or a loan, line of credit, loan guarantee, or loan insurance exceeding \$150,000, it must make the following certification and, if applicable, make a disclosure regarding the applicant's lobbying activities. This certification is required by 49 CFR § 20.110 and app. A to that part.*

*This certification does not apply to an applicant that is an Indian Tribe, Indian organization, or an Indian tribal organization exempt from the requirements of 49 CFR Part 20.*

##### **4.1. Certification for Contracts, Grants, Loans, and Cooperative Agreements.**

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

- (a) 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 awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence 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.
- (c) 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. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### **4.2. Statement for Loan Guarantees and Loan Insurance.**

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence 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 commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### **CATEGORY 5. PRIVATE SECTOR PROTECTIONS.**

*If the applicant will apply for funds that it will use to acquire or operate public transportation facilities or equipment, the applicant must make the following certification regarding protections for the private sector.*

#### **5.1. Charter Service Agreement.**

*To enforce the provisions of 49 U.S.C. § 5323(d), FTA's charter service regulation requires each applicant seeking assistance from FTA for the purpose of acquiring or operating any public transportation equipment or facilities to make the following Charter Service Agreement. 49 CFR § 604.4.*

The applicant agrees that it, and each of its subrecipients, and third party contractors at any level who use FTA-funded vehicles, may provide charter service using equipment or facilities acquired with Federal assistance authorized under the Federal Transit Laws only in compliance with the regulations set out in 49 CFR Part 604, the terms and conditions of which are incorporated herein by reference.

## **5.2. School Bus Agreement.**

*To enforce the provisions of 49 U.S.C. § 5323(f), FTA's school bus regulation requires each applicant seeking assistance from FTA for the purpose of acquiring or operating any public transportation equipment or facilities to make the following agreement regarding the provision of school bus services. 49 CFR § 605.15.*

- (a) If the applicant is not authorized by the FTA Administrator under 49 CFR § 605.11 to engage in school bus operations, the applicant agrees and certifies as follows:
  - (1) The applicant and any operator of project equipment agrees that it will not engage in school bus operations in competition with private school bus operators.
  - (2) The applicant agrees that it will not engage in any practice which constitutes a means of avoiding the requirements of this agreement, part 605 of the Federal Mass Transit Regulations, or section 164(b) of the Federal-Aid Highway Act of 1973 (49 U.S.C. 1602a(b)).
- (b) If the applicant is authorized or obtains authorization from the FTA Administrator to engage in school bus operations under 49 CFR § 605.11, the applicant agrees as follows:
  - (1) The applicant agrees that neither it nor any operator of project equipment will engage in school bus operations in competition with private school bus operators except as provided herein.
  - (2) The applicant, or any operator of project equipment, agrees to promptly notify the FTA Administrator of any changes in its operations which might jeopardize the continuation of an exemption under § 605.11.
  - (3) The applicant agrees that it will not engage in any practice which constitutes a means of avoiding the requirements of this agreement, part 605 of the Federal Transit Administration regulations or section 164(b) of the Federal-Aid Highway Act of 1973 (49 U.S.C. 1602a(b)).
  - (4) The applicant agrees that the project facilities and equipment shall be used for the provision of mass transportation services within its urban area and that any other use of project facilities and equipment will be incidental to and shall not interfere with the use of such facilities and equipment in mass transportation service to the public.

## **CATEGORY 6. TRANSIT ASSET MANAGEMENT PLAN.**

*If the applicant owns, operates, or manages capital assets used to provide public transportation, the following certification is required by 49 U.S.C. § 5326(a).*

The applicant certifies that it is in compliance with 49 CFR Part 625.

## **CATEGORY 7. ROLLING STOCK BUY AMERICA REVIEWS AND BUS TESTING.**

### **7.1. Rolling Stock Buy America Reviews.**

*If the applicant will apply for an award to acquire rolling stock for use in revenue service, it must make this certification. This certification is required by 49 CFR § 663.7.*

The applicant certifies that it will conduct or cause to be conducted the pre-award and post-delivery audits prescribed by 49 CFR Part 663 and will maintain on file the certifications required by Subparts B, C, and D of 49 CFR Part 663.

### **7.2. Bus Testing.**

*If the applicant will apply for funds for the purchase or lease of any new bus model, or any bus model with a major change in configuration or components, the applicant must make this certification. This certification is required by 49 CFR § 665.7.*

The applicant certifies that the bus was tested at the Bus Testing Facility and that the bus received a passing test score as required by 49 CFR Part 665. The applicant has received or will receive the appropriate full Bus Testing Report and any applicable partial testing reports before final acceptance of the first vehicle.

## **CATEGORY 8. URBANIZED AREA FORMULA GRANTS PROGRAM.**

*If the applicant will apply for an award under the Urbanized Area Formula Grants Program (49 U.S.C. § 5307), or any other program or award that is subject to the requirements of 49 U.S.C. § 5307, including the Formula Grants for the Enhanced Mobility of Seniors Program (49 U.S.C. § 5310); “flex funds” from infrastructure programs administered by the Federal Highways Administration (see 49 U.S.C. § 5334(i)); projects that will receive an award authorized by the Transportation Infrastructure Finance and Innovation Act (“TIFIA”) (23 U.S.C. §§ 601–609) or State Infrastructure Bank Program (23 U.S.C. § 610) (see 49 U.S.C. § 5323(o)); formula awards or competitive awards to urbanized areas under the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339(a) and (b)); or low or no emission awards to any area under the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339(c)), the applicant must make the following certification. This certification is required by 49 U.S.C. § 5307(c)(1).*

The applicant certifies that it:

- (a) Has or will have the legal, financial, and technical capacity to carry out the program of projects (developed pursuant 49 U.S.C. § 5307(b)), including safety and security aspects of the program;
- (b) Has or will have satisfactory continuing control over the use of equipment and facilities;

- (c) Will maintain equipment and facilities in accordance with the applicant's transit asset management plan;
- (d) Will ensure that, during non-peak hours for transportation using or involving a facility or equipment of a project financed under this section, a fare that is not more than 50 percent of the peak hour fare will be charged for any—
  - (1) Senior;
  - (2) Individual who, because of illness, injury, age, congenital malfunction, or any other incapacity or temporary or permanent disability (including an individual who is a wheelchair user or has semi-ambulatory capability), cannot use a public transportation service or a public transportation facility effectively without special facilities, planning, or design; and
  - (3) Individual presenting a Medicare card issued to that individual under title II or XVIII of the Social Security Act (42 U.S.C. §§ 401 et seq., and 1395 et seq.);
- (e) In carrying out a procurement under 49 U.S.C. § 5307, will comply with 49 U.S.C. §§ 5323 (general provisions) and 5325 (contract requirements);
- (f) Has complied with 49 U.S.C. § 5307(b) (program of projects requirements);
- (g) Has available and will provide the required amounts as provided by 49 U.S.C. § 5307(d) (cost sharing);
- (h) Will comply with 49 U.S.C. §§ 5303 (metropolitan transportation planning) and 5304 (statewide and nonmetropolitan transportation planning);
- (i) Has a locally developed process to solicit and consider public comment before raising a fare or carrying out a major reduction of transportation;
- (j) Either—
  - (1) Will expend for each fiscal year for public transportation security projects, including increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, providing an emergency telephone line to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned public transportation system, at least 1 percent of the amount the recipient receives for each fiscal year under 49 U.S.C. § 5336; or
  - (2) Has decided that the expenditure for security projects is not necessary;
- (k) In the case of an applicant for an urbanized area with a population of not fewer than 200,000 individuals, as determined by the Bureau of the Census, will submit an annual report listing projects carried out in the preceding fiscal year under 49 U.S.C. § 5307 for associated transit improvements as defined in 49 U.S.C. § 5302; and
- (l) Will comply with 49 U.S.C. § 5329(d) (public transportation agency safety plan).

## **CATEGORY 9. FORMULA GRANTS FOR RURAL AREAS.**

*If the applicant will apply for funds made available to it under the Formula Grants for Rural Areas Program (49 U.S.C. § 5311), it must make this certification. Paragraph (a) of this certification helps FTA make the determinations required by 49 U.S.C. § 5310(b)(2)(C). Paragraph (b) of this certification is required by 49 U.S.C. § 5311(f)(2). Paragraph (c) of this certification, which applies to funds apportioned for the Appalachian Development Public Transportation Assistance Program, is necessary to enforce the conditions of 49 U.S.C. § 5311(c)(2)(D).*

- (a) The applicant certifies that its State program for public transportation service projects, including agreements with private providers for public transportation service—
  - (1) Provides a fair distribution of amounts in the State, including Indian reservations; and
  - (2) Provides the maximum feasible coordination of public transportation service assisted under 49 U.S.C. § 5311 with transportation service assisted by other Federal sources; and
- (b) If the applicant will in any fiscal year expend less than 15% of the total amount made available to it under 49 U.S.C. § 5311 to carry out a program to develop and support intercity bus transportation, the applicant certifies that it has consulted with affected intercity bus service providers, and the intercity bus service needs of the State are being met adequately.
- (c) If the applicant will use for a highway project amounts that cannot be used for operating expenses authorized under 49 U.S.C. § 5311(c)(2) (Appalachian Development Public Transportation Assistance Program), the applicant certifies that—
  - (1) It has approved the use in writing only after providing appropriate notice and an opportunity for comment and appeal to affected public transportation providers; and
  - (2) It has determined that otherwise eligible local transit needs are being addressed.

## **CATEGORY 10. FIXED GUIDEWAY CAPITAL INVESTMENT GRANTS AND THE EXPEDITED PROJECT DELIVERY FOR CAPITAL INVESTMENT GRANTS PILOT PROGRAM.**

*If the applicant will apply for an award under any subsection of the Fixed Guideway Capital Investment Program (49 U.S.C. § 5309), including an award made pursuant to the FAST Act's Expedited Project Delivery for Capital Investment Grants Pilot Program (Pub. L. 114-94, div. A, title III, § 3005(b)), the applicant must make the following certification. This certification is required by 49 U.S.C. § 5309(c)(2) and Pub. L. 114-94, div. A, title III, § 3005(b)(3)(B).*

The applicant certifies that it:

- (a) Has or will have the legal, financial, and technical capacity to carry out its Award, including the safety and security aspects of that Award,
- (b) Has or will have satisfactory continuing control over the use of equipment and facilities acquired or improved under its Award.
- (c) Will maintain equipment and facilities acquired or improved under its Award in accordance with its transit asset management plan; and
- (d) Will comply with 49 U.S.C. §§ 5303 (metropolitan transportation planning) and 5304 (statewide and nonmetropolitan transportation planning).

**CATEGORY 11. GRANTS FOR BUSES AND BUS FACILITIES AND LOW OR NO EMISSION VEHICLE DEPLOYMENT GRANT PROGRAMS.**

*If the applicant is in an urbanized area and will apply for an award under subsection (a) (formula grants), subsection (b) (buses and bus facilities competitive grants), or subsection (c) (low or no emissions grants) of the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the certification in Category 8 for Urbanized Area Formula Grants (49 U.S.C. § 5307). This certification is required by 49 U.S.C. § 5339(a)(3), (b)(6), and (c)(3), respectively.*

*If the applicant is in a rural area and will apply for an award under subsection (a) (formula grants), subsection (b) (bus and bus facilities competitive grants), or subsection (c) (low or no emissions grants) of the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the certification in Category 9 for Formula Grants for Rural Areas (49 U.S.C. § 5311). This certification is required by 49 U.S.C. § 5339(a)(3), (b)(6), and (c)(3), respectively.*

*Making this certification will incorporate by reference the applicable certifications in Category 8 or Category 9.*

*If the applicant will receive a competitive award under subsection (b) (buses and bus facilities competitive grants), or subsection (c) (low or no emissions grants) of the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339) related to zero emissions vehicles or related infrastructure, it must make the following certification. This certification is required by 49 U.S.C. § 5339(d).*

The applicant will use 5 percent of grants related to zero emissions vehicles (as defined in subsection (c)(1)) or related infrastructure under subsection (b) or (c) to fund workforce development training as described in section 49 U.S.C. § 5314(b)(2) (including registered apprenticeships and other labor-management training programs) under the recipient's plan to address the impact of the transition to zero emission vehicles on the applicant's current workforce; or the applicant certifies a smaller percentage is necessary to carry out that plan.

## **CATEGORY 12. ENHANCED MOBILITY OF SENIORS AND INDIVIDUALS WITH DISABILITIES PROGRAMS.**

*If the applicant will apply for an award under the Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program (49 U.S.C. § 5310), it must make the certification in Category 8 for Urbanized Area Formula Grants (49 U.S.C. § 5307). This certification is required by 49 U.S.C. § 5310(e)(1). Making this certification will incorporate by reference the certification in Category 8, except that FTA has determined that (d), (f), (i), (j), and (k) of Category 8 do not apply to awards made under 49 U.S.C. § 5310 and will not be enforced.*

*In addition to the certification in Category 8, the applicant must make the following certification that is specific to the Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program. This certification is required by 49 U.S.C. § 5310(e)(2).*

The applicant certifies that:

- (a) The projects selected by the applicant are included in a locally developed, coordinated public transit-human services transportation plan;
- (b) The plan described in clause (a) was developed and approved through a process that included participation by seniors, individuals with disabilities, representatives of public, private, and nonprofit transportation and human services providers, and other members of the public;
- (c) To the maximum extent feasible, the services funded under 49 U.S.C. § 5310 will be coordinated with transportation services assisted by other Federal departments and agencies, including any transportation activities carried out by a recipient of a grant from the Department of Health and Human Services; and
- (d) If the applicant will allocate funds received under 49 U.S.C. § 5310 to subrecipients, it will do so on a fair and equitable basis.

## **CATEGORY 13. STATE OF GOOD REPAIR GRANTS.**

*If the applicant will apply for an award under FTA's State of Good Repair Grants Program (49 U.S.C. § 5337), it must make the following certification. Because FTA generally does not review the transit asset management plans of public transportation providers, the asset management certification is necessary to enforce the provisions of 49 U.S.C. § 5337(a)(4). The certification with regard to acquiring restricted rail rolling stock is required by 49 U.S.C. § 5323(u)(4). Note that this certification is not limited to the use of Federal funds.*

The applicant certifies that the projects it will carry out using assistance authorized by the State of Good Repair Grants Program, 49 U.S.C. § 5337, are aligned with the applicant's most recent transit asset management plan and are identified in the investment and prioritization section of such plan, consistent with the requirements of 49 CFR Part 625.

If the applicant operates a rail fixed guideway service, the applicant certifies that, in the fiscal year for which an award is available to the applicant under the State of Good Repair Grants Program, 49 U.S.C. § 5337, the applicant will not award any contract or subcontract for the procurement of rail rolling stock for use in public transportation with a rail rolling stock manufacturer described in 49 U.S.C. § 5323(u)(1).

#### **CATEGORY 14. INFRASTRUCTURE FINANCE PROGRAMS.**

*If the applicant will apply for an award for a project that will include assistance under the Transportation Infrastructure Finance and Innovation Act (“TIFIA”) Program (23 U.S.C. §§ 601–609) or the State Infrastructure Banks (“SIB”) Program (23 U.S.C. § 610), it must make the certifications in Category 8 for the Urbanized Area Formula Grants Program, Category 10 for the Fixed Guideway Capital Investment Grants program, and Category 13 for the State of Good Repair Grants program. These certifications are required by 49 U.S.C. § 5323(o).*

*Making this certification will incorporate the certifications in Categories 8, 10, and 13 by reference.*

#### **CATEGORY 15. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.**

*If the applicant will apply for an award under FTA’s Urbanized Area Formula Grants Program (49 U.S.C. § 5307), Fixed Guideway Capital Investment Program (49 U.S.C. § 5309), Formula Grants for Rural Areas Program (49 U.S.C. § 5311), or Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339) programs, the applicant must make the following certification. The applicant must make this certification on its own behalf and on behalf of its subrecipients and contractors. This certification is required by 49 CFR § 655.83.*

The applicant certifies that it, its subrecipients, and its contractors are compliant with FTA’s regulation for the Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations, 49 CFR Part 655.

#### **CATEGORY 16. RAIL SAFETY TRAINING AND OVERSIGHT.**

*If the applicant is a State with at least one rail fixed guideway system, or is a State Safety Oversight Agency, or operates a rail fixed guideway system, it must make the following certification. The elements of this certification are required by 49 CFR §§ 672.31 and 674.39.*

The applicant certifies that the rail fixed guideway public transportation system and the State Safety Oversight Agency for the State are:

- (a) Compliant with the requirements of 49 CFR Part 672, “Public Transportation Safety Certification Training Program”; and
- (b) Compliant with the requirements of 49 CFR Part 674, “State Safety Oversight”.

## **CATEGORY 17. DEMAND RESPONSIVE SERVICE.**

*If the applicant operates demand responsive service and will apply for an award to purchase a non-rail vehicle that is not accessible within the meaning of 49 CFR Part 37, it must make the following certification. This certification is required by 49 CFR § 37.77.*

The applicant certifies that the service it provides to individuals with disabilities is equivalent to that provided to other persons. A demand responsive system, when viewed in its entirety, is deemed to provide equivalent service if the service available to individuals with disabilities, including individuals who use wheelchairs, is provided in the most integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals with respect to the following service characteristics:

- (a) Response time;
- (b) Fares;
- (c) Geographic area of service;
- (d) Hours and days of service;
- (e) Restrictions or priorities based on trip purpose;
- (f) Availability of information and reservation capability; and
- (g) Any constraints on capacity or service availability.

## **CATEGORY 18. INTEREST AND FINANCING COSTS.**

*If the applicant will pay for interest or other financing costs of a project using assistance awarded under the Urbanized Area Formula Grants Program (49 U.S.C. § 5307), the Fixed Guideway Capital Investment Grants Program (49 U.S.C. § 5309), or any program that must comply with the requirements of 49 U.S.C. § 5307, including the Formula Grants for the Enhanced Mobility of Seniors Program (49 U.S.C. § 5310), “flex funds” from infrastructure programs administered by the Federal Highways Administration (see 49 U.S.C. § 5334(i)), or awards to urbanized areas under the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the following certification. This certification is required by 49 U.S.C. §§ 5307(e)(3) and 5309(k)(2)(D).*

The applicant certifies that:

- (a) Its application includes the cost of interest earned and payable on bonds issued by the applicant only to the extent proceeds of the bonds were or will be expended in carrying out the project identified in its application; and
- (b) The applicant has shown or will show reasonable diligence in seeking the most favorable financing terms available to the project at the time of borrowing.

## **CATEGORY 19. CYBERSECURITY CERTIFICATION FOR RAIL ROLLING STOCK AND OPERATIONS.**

*If the applicant operates a rail fixed guideway public transportation system, it must make this certification. This certification is required by 49 U.S.C. § 5323(v). For information about standards or practices that may apply to a rail fixed guideway public transportation system, visit <https://www.nist.gov/cyberframework> and <https://www.cisa.gov/>.*

The applicant certifies that it has established a process to develop, maintain, and execute a written plan for identifying and reducing cybersecurity risks that complies with the requirements of 49 U.S.C. § 5323(v)(2).

## **CATEGORY 20. PUBLIC TRANSPORTATION ON INDIAN RESERVATIONS FORMULA AND DISCRETIONARY PROGRAM (TRIBAL TRANSIT PROGRAMS).**

*Before FTA may provide Federal assistance for an Award financed under either the Public Transportation on Indian Reservations Formula or Discretionary Program authorized under 49 U.S.C. § 5311(c)(1), as amended by the FAST Act, (Tribal Transit Programs), the applicant must select the Certifications in Category 21, except as FTA determines otherwise in writing. Tribal Transit Program applicants may certify to this Category and Category 1 (Certifications and Assurances Required of Every Applicant) and need not make any other certification, to meet Tribal Transit Program certification requirements. If an applicant will apply for any program in addition to the Tribal Transit Program, additional certifications may be required.*

FTA has established terms and conditions for Tribal Transit Program grants financed with Federal assistance appropriated or made available under 49 U.S.C. § 5311(c)(1). The applicant certifies that:

- (a) It has or will have the legal, financial, and technical capacity to carry out its Award, including the safety and security aspects of that Award.
- (b) It has or will have satisfactory continuing control over the use of its equipment and facilities acquired or improved under its Award.
- (c) It will maintain its equipment and facilities acquired or improved under its Award, in accordance with its transit asset management plan and consistent with FTA regulations, “Transit Asset Management,” 49 CFR Part 625. Its Award will achieve maximum feasible coordination with transportation service financed by other federal sources.
- (d) With respect to its procurement system:
  - (1) It will have a procurement system that complies with U.S. DOT regulations, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 1201, which incorporates by reference U.S. OMB regulatory guidance, “Uniform Administrative Requirements, Cost

- Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 200, for Awards made on or after December 26, 2014,
- (2) It will have a procurement system that complies with U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” 49 CFR Part 18, specifically former 49 CFR § 18.36, for Awards made before December 26, 2014, or
  - (3) It will inform FTA promptly if its procurement system does not comply with either of those U.S. DOT regulations.
- (e) It will comply with the Certifications, Assurances, and Agreements in:
- (1) Category 05.1 and 05.2 (Charter Service Agreement and School Bus Agreement),
  - (2) Category 06 (Transit Asset Management Plan),
  - (3) Category 07.1 and 07.2 (Rolling Stock Buy America Reviews and Bus Testing),
  - (4) Category 09 (Formula Grants for Rural Areas),
  - (5) Category 15 (Alcohol and Controlled Substances Testing), and
  - (6) Category 17 (Demand Responsive Service).

#### **CATEGORY 21. EMERGENCY RELIEF PROGRAM.**

*An applicant to the Public Transportation Emergency Relief Program, 49 U.S.C. § 5324, must make the following certification. The certification is required by 49 U.S.C. § 5324(f) and must be made before the applicant can receive a grant under the Emergency Relief program.*

The applicant certifies that the applicant has insurance required under State law for all structures related to the emergency relief program grant application.

**FEDERAL FISCAL YEAR 2024 CERTIFICATIONS AND ASSURANCES FOR FTA  
ASSISTANCE PROGRAMS**

(Signature pages alternate to providing Certifications and Assurances in TrAMS.)

Name of Applicant: \_\_\_\_\_

The Applicant certifies to the applicable provisions of all categories: (*check here*) \_\_\_\_\_.

*Or,*

The Applicant certifies to the applicable provisions of the categories it has selected:

Category	Certification
01 Certifications and Assurances Required of Every Applicant	_____
02 Public Transportation Agency Safety Plans	_____
03 Tax Liability and Felony Convictions	_____
04 Lobbying	_____
05 Private Sector Protections	_____
06 Transit Asset Management Plan	_____
07 Rolling Stock Buy America Reviews and Bus Testing	_____
08 Urbanized Area Formula Grants Program	_____
09 Formula Grants for Rural Areas	_____
10 Fixed Guideway Capital Investment Grants and the Expedited Project Delivery for Capital Investment Grants Pilot Program	_____
11 Grants for Buses and Bus Facilities and Low or No Emission Vehicle Deployment Grant Programs	_____

- 12 Enhanced Mobility of Seniors and Individuals with Disabilities Programs
- 13 State of Good Repair Grants
- 14 Infrastructure Finance Programs
- 15 Alcohol and Controlled Substances Testing
- 16 Rail Safety Training and Oversight
- 17 Demand Responsive Service
- 18 Interest and Financing Costs
- 19 Cybersecurity Certification for Rail Rolling Stock and Operations
- 20 Tribal Transit Programs
- 21 Emergency Relief Program

**CERTIFICATIONS AND ASSURANCES SIGNATURE PAGE**

**AFFIRMATION OF APPLICANT**

Name of the Applicant: \_\_\_\_\_

BY SIGNING BELOW, on behalf of the Applicant, I declare that it has duly authorized me to make these Certifications and Assurances and bind its compliance. Thus, it agrees to comply with all federal laws, regulations, and requirements, follow applicable federal guidance, and comply with the Certifications and Assurances as indicated on the foregoing page applicable to each application its Authorized Representative makes to the Federal Transit Administration (FTA) in the federal fiscal year, irrespective of whether the individual that acted on his or her Applicant's behalf continues to represent it.

The Certifications and Assurances the Applicant selects apply to each Award for which it now seeks, or may later seek federal assistance to be awarded by FTA during the federal fiscal year.

The Applicant affirms the truthfulness and accuracy of the Certifications and Assurances it has selected in the statements submitted with this document and any other submission made to FTA, and acknowledges that the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 *et seq.*, and implementing U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31, apply to any certification, assurance or submission made to FTA. The criminal provisions of 18 U.S.C. § 1001 apply to any certification, assurance, or submission made in connection with a federal public transportation program authorized by 49 U.S.C. chapter 53 or any other statute

In signing this document, I declare under penalties of perjury that the foregoing Certifications and Assurances, and any other statements made by me on behalf of the Applicant are true and accurate.

Signature \_\_\_\_\_ Date: \_\_\_\_\_

Name \_\_\_\_\_ Authorized Representative of Applicant

#### **AFFIRMATION OF APPLICANT'S ATTORNEY**

For (Name of Applicant): \_\_\_\_\_

As the undersigned Attorney for the above-named Applicant, I hereby affirm to the Applicant that it has authority under state, local, or tribal government law, as applicable, to make and comply with the Certifications and Assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the Certifications and Assurances have been legally made and constitute legal and binding obligations on it.

I further affirm that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these Certifications and Assurances, or of the performance of its FTA assisted Award.

Signature \_\_\_\_\_ Date: \_\_\_\_\_

Name \_\_\_\_\_ Attorney for Applicant

*Each Applicant for federal assistance to be awarded by FTA must provide an Affirmation of Applicant's Attorney pertaining to the Applicant's legal capacity. The Applicant may enter its electronic signature in lieu of the Attorney's signature within TrAMS, provided the Applicant has on file and uploaded to TrAMS this hard-copy Affirmation, signed by the attorney and dated this federal fiscal year.*

## **Insurance Requirements for Consulting and Professional Services**

\_\_\_\_\_ (“Consultant”) shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

### **I. MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

- A. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- B. **Automobile Liability:** Insurance Services Office Form CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
- C. **Workers’ Compensation:** Insurance as required by the State of Texas, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease. *(Not required if Consultant provides written verification it has no employees)*
- D. **Professional Liability:** (Errors and Omissions) If applicable, insurance appropriate to the Consultant’s profession, with limit no less than **\$2,000,000** per occurrence or claim, **\$2,000,000** aggregate.
- E. If Consultant maintains broader coverage and/or higher limits than the minimums shown above, the SETRPC requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the SETRPC.

### **II. OTHER INSURANCE PROVISIONS**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

- A. **Additional Insured Status–** The SETRPC, its officers, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant’s insurance (at least as

broad as ISO Form CG 20 10 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used).

- B. **Primary Coverage**– For any claims related to this contract, the Consultant’s insurance coverage shall be primary insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects the SETRPC, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the SETRPC, its officers, officials, employees, or volunteers shall be excess of the Consultant’s insurance and shall not contribute with it.
- C. **Notice of Cancellation**– Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the SETRPC.
- D. **Waiver of Subrogation**– Consultant hereby grants to the SETRPC a waiver of any right to subrogation which any insurer of said Consultant may acquire against the SETRPC by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the SETRPC has received a waiver of subrogation endorsement from the insurer.
- E. **Self-Insured Retentions**– Self-insured retentions must be declared to and approved by the SETRPC. The SETRPC may require the Consultant to provide proof of ability to pay losses and related investigations, claim administrations, and defense expenses with the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the SETRPC.
- F. **Acceptability of Insurers**– Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to the SETRPC.
- G. **Claims Made Policies**– If any of the required policies provide coverage on a claims-made basis:
  - 1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
  - 2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
  - 3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.

- F. **Verification of Coverage**— Consultant shall furnish the SETRPC with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to SETRPC before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The SETRPC reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- G. **Subcontractors**— Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that the SETRPC is an additional insured on insurance required from subcontractors.
- H. **Special Risks or Circumstances**— The SETRPC reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.