

# CONSULTANT SERVICES AGREEMENT

*[Project Name]*

This Agreement by and between the Mid-America Regional Council, hereinafter referred to as "MARC," and [redacted] hereinafter referred to as the "Consultant" is effective the date signed by MARC's Executive Director or his/her designee.

## **WITNESSETH:**

WHEREAS, MARC is developing the *[project name]*, hereinafter referred to as the "Project", and MARC desires to retain the Consultant to provide certain services to MARC as part of MARC's development and management of the Project; and

WHEREAS, the Consultant and MARC have agreed on the services that the Consultant will provide to MARC and the fees that the Consultant will be paid for such services, all as provided in this Agreement; and

WHEREAS, the Project involves the *[sponsor]*, hereinafter referred to as the "City", and is being financed in part with funding from the United States Department of Transportation (USDOT), in particular the Federal Transit Administration (FTA). and as such, is subject to applicable federal requirements and regulations; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

### **1. SCOPE OF SERVICES**

Consultant shall exercise commercially reasonable efforts to perform the services described in Attachment A, hereinafter collectively referred to as the "Services", and within any time frames as may be specified in Attachment A. The Consultant shall not, however, have any obligation to commence any of the Services until the Consultant receives written notice to proceed from MARC specifying a commencement date for the Services (the "Commencement Date"), and any time frames specified in Attachment A shall commence on, and run from, the Commencement Date.

### **2. TIME OF PERFORMANCE**

The Consultant shall begin performance of service upon issuance of a written "Notice to Proceed" by MARC, and shall work diligently to perform all services and meet all deadlines as described in Attachment A to MARC's reasonable satisfaction by *[month]* *[day]*, *[year]*.

### **3. UNAVOIDABLE DELAYS**

If the completion of any of the Services shall be unavoidably delayed, MARC shall extend the time for completion of this Agreement for not less than the number of days the Consultant was excusably delayed. A delay is unavoidable only if the delay is not reasonably expected to occur in connection with or during the Consultant's performance of the Services, is not caused directly or substantially by error or negligent acts of the Consultant, or is a force majeure event. The

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Consultant shall give MARC prompt written notice of any such unavoidable delay, and a description of the cause or causes for such delay.

## 4. COMPENSATION

A. Payment - MARC shall pay the Consultant the actual cost incurred for performance of the Services plus a fixed fee of \$[fixed fee] (the "Fixed Fee"). The maximum compensation paid by MARC to the Consultant for all of the Services shall not exceed \$[project total]. Payments to the Consultant shall be made in accordance with Attachment B.

Actual costs are defined as:

- i. Actual payroll salaries paid to employees with respect to time that they devote to the Services, plus
- ii. An amount estimated at [fringe]% of actual salaries for payroll additives, including payroll taxes, holiday, vacation, and sick leave pay, insurance benefits, retirement and incentive pay, plus
- iii. An amount estimated at [overhead]% of actual salaries for general administrative overhead based on the Consultant's system for allocating indirect cost in accordance the Consultant's past practices, plus
- iv. Other costs directly attributable to the Services but not included in any of subparagraphs i through iii above, such as vehicle mileage, meals, lodging, printing, and computer time, plus
- v. Project costs incurred by others on a subcontract basis, said costs to be passed through the Consultant on the basis of actual cost as invoiced by the subcontractors, and
- vi. The rates shown in subparagraphs ii and iii above are approximate and will be used for interim billing purposes. Final payment will be based on the actual rates experienced during the period of performance, as indicated by the Consultant's accounting records, and as determined by final audit of the Consultant's records by MARC or FTA.

The payment of costs under this Agreement will be limited to costs which are allowable under 23 CFR 172 and 48 CFR 31.

B. Compensation for Additional Services - If MARC, after consultation with funding agencies, makes a written request for additional services from the Consultant, the Consultant may, but is not obligated to, prepare a description of the scope of services and fee estimate as a supplement to this Agreement. Extra work, modified work or any change in the fees specified in this Agreement requires the approval of

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a supplemental agreement by the City prior to performing the work or incurring the added cost.

C. Method and Time of Payment - Payment shall be made in the following manner:

- (1) Consultant shall submit monthly invoices to MARC for services completed to date, along with a pro rata portion of the Fixed Fee, with such pro rata amount to be billed over a *[timeframe]* month period. Invoices shall be itemized and indicate the number of hours spent by each of the Consultant's employees assigned to the Services, subcontractor expense, and other costs.
- (2) MARC shall reimburse the Consultant within thirty (30) calendar days after the date of the invoice.
- (3) The Consultant shall maintain complete records to support invoiced charges under this Agreement. All such records shall be maintained in accordance with generally accepted accounting practices for a minimum period of three (3) years after final payment is made under this Agreement and shall, as described in Section 4(A)(vi) hereto, be identifiable and accessible to authorized representatives of MARC, the City and USDOT for inspection and audit in order to verify proper invoicing and payment hereunder.

D. Prompt Payment - Consultant agrees to pay each subcontractor utilized by the Consultant with respect to this Agreement for satisfactory performance of its contract no later than thirty (30) days from the receipt of each corresponding payment the Consultant receives from MARC.

E. Compensation After Termination - In the event that this Agreement is terminated by MARC or the Consultant pursuant to Section 4 below, the Consultant shall be paid its costs, including contract close-out costs, and shall be paid for all Services performed up to the time of termination and a pro rata portion of the Fixed Fee in accordance with subparagraph (C)(1) above. The Consultant shall promptly submit its termination claim to MARC to be paid by MARC to the Consultant in accordance with subparagraph (C and D) above. If the Consultant has any property in its possession belonging to MARC, the Consultant will account for the same, and return such property or dispose of it in the manner MARC reasonably directs.

## 5. TERMINATION

MARC and the Consultant each respectively reserve the right to terminate this Agreement at any time without cause by giving the other not less than thirty (30) days written notice of termination. Unless, with respect to a termination by MARC, the termination is a result of a lack of funding to MARC, in which case no prior notice of termination is required. MARC shall notify the Consultant on the same day that it becomes aware of such lack of funding. No such lack of funding shall

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relieve MARC of its liability under Section 3 for all Services already performed and for a pro rata portion of the Fixed Fee.

- A. Non – Performance: If either party shall for any reason fail to perform any of the material provisions of this Agreement, the other party may terminate this Agreement upon thirty (30) days notice and prior opportunity to cure as provided in subparagraph (B) below.
- B. Correction: A party will provide the non-performing party with a written notice of failure to perform, specifying a period of time of not less than thirty (30) days for the non-performing party to cure such failure.
- C. Subject to Section 8 and Section 9 hereof, in the event of termination, the Consultant shall deliver to MARC all Deliverables, in their then current form, for which Consultant has been paid for in full by MARC. After termination of this Agreement, MARC reserves the right to postpone or abandon further work of the type described by this Agreement or to cause such services to be continued or completed in such a manner, by such person(s), and under such terms and agreements, as MARC shall determine, but subject to Section 8 and Section 9.

The termination of this Agreement shall not affect any liability or obligation of MARC or the Consultant under this Agreement that accrued prior to, or as a result of, the termination, including, without limitation, any liability arising from any breach of this Agreement. The termination of this Agreement shall also not affect any provisions of this Agreement that state that they survive the termination of this Agreement or that contemplate performance by or continuing obligations of MARC or the Consultant following termination, including, without limitation, Section 8(E) hereof.

## **6. REPORTING REQUIREMENTS**

The Consultant shall submit monthly progress reports, in a form mutually acceptable to Consultant and MARC, in their respective sole discretion, along with each invoice, describing the Services completed during the previous month. Invoices will be based on the pricing as set forth on Attachment B. Each invoice will show the breakdown of the price by hours and rates. Progress reports shall also indicate the approximate percentage of each phase within the Services that has been completed by the Consultant. The accounting for and billing of labor charges shall be based on actual time expended at rates set forth in Attachment B.

## **7. CHANGES AND ADDITIONAL SERVICES**

This Agreement, including Attachment A and Attachment B hereto, constitutes the entire agreement between MARC and the Consultant, and may not be amended or altered in any way except by a written amendment signed by both parties to this Agreement. Attachment A and Attachment B are incorporated into this Agreement by this reference, but in the event of any conflict or inconsistency between any term or provision of Attachment A or Attachment B and any

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term or provision of this Agreement, this Agreement shall govern and control to the full extent of such conflict or inconsistency,

Any additions or deletions of assigned personnel as stated within Attachment B will be addressed through an addendum to Attachment B and shall occur only after consultation and mutual agreement between the Consultant and MARC.

## **8. ASSIGNMENT**

The Consultant's rights, obligations and duties under this Agreement shall not be assigned in whole or in part without MARC's written consent, which shall not be unreasonably withheld. However, claims for money due to the Consultant from MARC under the terms of this Agreement may be assigned by the Consultant to a bank, trust company or other such financial institution, provided that notice of such an assignment is given to MARC. The following sub-consultants are approved to participate in this Project.

- *[name(s) of subconsultants]*

## **9. COPYRIGHTS AND OWNERSHIP OF DELIVERABLES**

- A. No designs, reports, drawings, studies, estimates, specifications, models, computations, memoranda, documents, user manuals, graphic designs, software documentation, software (in source code and object code) and other papers or materials that were developed solely and exclusively by MARC and that are provided by MARC to the Consultant in connection with this Agreement and that are not incorporated into or otherwise used in any of the Deliverables, shall be the subject of an application for copyright by or on behalf of the Consultant.
- B. MARC and/or its assigns shall retain ownership and all rights and privileges of all reports and related documents including, but not limited to, all designs, reports, drawings, studies, estimates, specifications, models, computations, memoranda, documents, user manuals, graphic designs, software documentation, software (in source code and object code) and other papers or materials that were developed solely and exclusively by MARC and that are provided by MARC to the Consultant in connection with this Agreement and that are not incorporated into or otherwise used in any of the Deliverables.
- C. Parties agree that any Deliverables shall be considered "works made for hire" under the Copyright Laws of the United States. All rights, title and interest in and to the Deliverables, including copyright thereto, shall vest in MARC, who shall be deemed the author of the Deliverables. In the event that any Deliverable fails to meet the requirements for a "work made for hire" under the Copyright Laws of the United States, the Consultant hereby assigns to MARC all rights, title and interest in and to such Deliverable and all rights in and to the copyright therein throughout the world. The Consultant agrees that it will execute any reasonable assignments or

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documents of title as may be reasonably requested by MARC at any time within two years of the Commencement Date in order to perfect and preserve MARC's title to, and ownership of, all or any part of the Deliverables and all rights therein throughout the world.

- D. Reserved.
- E. The City and USDOT shall have a royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use any Deliverables and to authorize others to do the same only to the extent, if any, and as may be required by federal government funding mandates.

## 10. REPRESENTATIONS AND WARRANTIES BY MARC

MARC represents and warrants to the Consultant as follows:

- A. MARC acknowledges that the Consultant relied upon all information furnished by MARC to the Consultant (including MARC's Request for Qualifications dated *[RFP release date]* in connection with this Agreement in developing the type and scope of Services, Deliverables, fees and amounts to be paid to the Consultant by MARC.
- B. This Agreement has been duly authorized, executed and delivered by MARC, and constitutes the legal, valid and binding obligations of MARC, enforceable in accordance with its terms. MARC has the full right, capacity, power and authority to enter into, deliver and perform this Agreement.
- C. No software or other assets or properties as may be provided by MARC to the Consultant in connection with this Agreement shall violate or infringe upon, and the Consultant's use thereof in connection with the Services shall not violate or infringe upon, any United States patent, copyright, trademark, trade secret, proprietary or confidential information, nondisclosure or any other intellectual property or other right whatsoever of any person.

## 11. INDEPENDENT CONSULTANT

The Consultant will act as an independent contractor in the performance of the Services under this Agreement. Accordingly, the Consultant shall be responsible for payment of all required business license fees and all taxes including Federal, State and local taxes arising from the Consultant's activities under the terms of this Agreement.

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## 12. CONFLICT OF INTEREST

The Consultant covenants that it presently has no personal or pecuniary interest and shall not acquire such interest, directly or indirectly, which could conflict in any material manner with the performance of Services under this Agreement, including the submission of impartial reports and recommendations.

## 13. OTHER PROHIBITED INTERESTS

No officer, member or employee of MARC and no member of its governing body, and no other public official of the locality or localities in which the Project is being carried out who exercise any functions or responsibilities in the review and approval of the Project shall participate in any decision related to this Agreement affecting, either directly or indirectly, his or her personal interest. No member of or delegate to the Kansas Legislature, the Missouri General Assembly, or the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising from it.

## 14. INSURANCE

- A. The Consultant shall maintain commercial general liability, automobile liability, and worker's compensation and employer's liability insurance in force and effect to protect the Consultant from claims under Worker's Compensation Acts, claims for damages for personal injury or death, and for damages to property arising from the negligent acts, errors, or omissions of the Consultant and its employees in the performance of the Services covered by this Agreement, including, without limitation, risks insured against in commercial general liability policies.
- B. The Consultant shall also maintain professional liability insurance to protect the Consultant against the negligent acts, errors, or omissions of the Consultant and those for whom it is legally responsible, arising out of the performance of professional Services under this Agreement.
- C. The Consultant's insurance coverage shall be for not less than the following limits of liability:
  1. Commercial General Liability: \$3,000,000.00 per occurrence; limits can be met in combination of primary and excess coverages.
  2. Automobile Liability: \$3,000,000.00 per occurrence; limits can be met in combination of primary and excess coverages.
  3. Worker's Compensation in accordance with the statutory limits; and Employer's Liability: \$1,000,000.00 per bodily injury by accident and by disease per employee; and

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4. Professional ("Errors and Omissions") Liability: \$2,000,000.00, each claim and in the annual aggregate.
- D. **Additional Insured.** MARC shall be included as an additional insured under Consultant's furnished general liability and auto liability insurance (), for ongoing and completed operations, using ISO Additional Insured Endorsement (CG 20 10), edition date 11/85, or an equivalent (e.g., CG 20 10, edition date 10/93, plus CG 20 37, edition date 10/01), under the commercial general liability policy. Said insurance shall be written on an OCCURRENCE basis, and shall be PRIMARY and NON-CONTRIBUTING with any other insurance maintained by MARC. Insurance certificates, written on a standard ACORD form, **and a copy of the additional insured endorsement and the notice of cancellation endorsement**, must be received by MARC prior to commencement of work on site. Additionally, all insurance certificates will state that all coverages are in effect and will not be canceled or terminated without thirty (30) days' prior written notice to MARC and other required additional insureds. Consultant shall provide thirty (30) days' prior written notice to MARC of any material changes, including any material reduction in coverage. Sub-consultant shall cause its general liability and auto liability and worker's compensation insurers to issue an endorsement assuring that the insurer will furnish MARC with such advance notice of cancellation or equivalent.
- E. Any insurance policy required as specified in this Section shall be written by a company which is incorporated in the United States of America or is based in the United States of America. Each insurance policy must be issued by a company authorized to issue such insurance in the State of Missouri.
- F. As between Consultant and MARC, the parties waive any and all rights against each other, including their rights of subrogation, for damages covered by property insurance during and after the completion of Services under this Agreement. Consultant and MARC will ensure that their property insurance policies provide that the underwriters waive all such claims and rights of recovery by subrogation against the other in connection with loss or damage covered under the insurance policy.

## 15. **GOVERNING LAW**

This Agreement shall be interpreted under and governed by the laws of the State of Missouri. Whenever there is no applicable state statute or decisional precedent governing the interpretation of this Agreement, then federal common law shall govern.

## 16. **DISPUTES**

Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by MARC's Director of Transportation or his designee. This



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decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Consultant mails or otherwise furnishes a written appeal to MARC's Executive Director. In connection with any such appeal, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of MARC's Executive Director shall be binding upon the Consultant and the Consultant shall abide by the decision unless it decides to further pursue its remedies through formal proceedings in court, arbitration or otherwise as described in this Agreement, which the Consultant may do, in the Consultant's sole discretion.

## 17. PERFORMANCE DURING DISPUTE

Unless otherwise directed by MARC, the Consultant shall continue performance under this Agreement while matters in dispute are being resolved, except to the extent the matter in dispute is with respect to MARC's payment obligations under this Agreement or whether a particular service is required to be performed by the Consultant under, or is within the scope of, this Agreement.

## 18. REMEDIES

Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between MARC and the Consultant arising out of or relating to this Agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State Missouri.

## 19. RIGHTS AND REMEDIES

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

## 20. CONFIDENTIALITY

Except as otherwise expressly provided in this Agreement and subject to applicable law, each party hereto agrees that (a) all information communicated to it by the other and identified as confidential, whether before or after the date hereof, and (b) all information identified as confidential to which it has access in connection with the Services, whether before or after the date hereof, will be and will be deemed to have been received in confidence and will be used only for purposes of this Agreement, and each party agrees to use the same means as it uses to protect its own confidential information, but in no event less than reasonable means, to prevent the disclosure and to protect the confidentiality thereof. No such information will be disclosed by the recipient party without the prior written consent of the other party.

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The foregoing will not prevent either party from disclosing information that belongs to such party or (i) is already known by the recipient party without an obligation of confidentiality other than under this Agreement, (ii) is publicly known or becomes publicly known through no unauthorized act of the recipient party, (iii) is rightfully received from a third party, (iv) is independently developed without use of the other party's confidential information or (v) is disclosed without similar restrictions to a third party by the party owning the confidential information. If confidential information is required to be disclosed pursuant to a requirement of a governmental body, authority, law, order, or regulation, such confidential information may be disclosed pursuant to such requirement so long as the party required to disclose the confidential information, to the extent possible, provides the other party with timely prior notice of such requirement and coordinates with such other party (at such other party's cost) in an effort to limit the nature and scope of such required disclosure, provided, however, that, in the event of a USDOT or tax audit, (A) notice of a disclosure requirement in connection therewith will not be given, and (B) the parties will use commercially reasonable efforts to ensure that any confidential information that is subject to a valid request for delivery of a copy of such information (including a copy of this Agreement) to the auditing authority is not subject to further disclosure by it (such as by marking such information as confidential and/or a trade secret). Upon written request of the disclosing party, all documented confidential information (and all copies thereof) of the disclosing party will be returned to the disclosing party or will be destroyed, with written certification thereof being given to the disclosing party. The provisions of this section will survive for one (1) year following the completion of the Services or the earlier expiration or termination of this Agreement for any reason.

## **21. NOTICES**

Any action by MARC under this Agreement may be taken by David A. Warm, Executive Director, or such other person as MARC may designate for such purpose by written notice to the Consultant. All compensation and written notices to the Consultant shall be considered to be properly given if mailed, postage prepaid, delivered in person or transmitted by facsimile machine or electronic mail to:

[consultant primary contact]  
[title]  
[firm name]  
[street address]  
[city], [state] [zipcode]  
[phone number]  
[fax number]  
[email]

All invoices, written reports and written notices given to MARC shall be considered to be sufficiently given if mailed, postage prepaid, delivered in person, or transmitted by facsimile machine or electronic mail to:

[MARC liaison]  
[title]

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*[Project Name]*

Mid-America Regional Council  
Rivergate Center  
600 Broadway, Suite 200  
Kansas City, Missouri 64105-1659  
Telephone: (816) 701-[extension]  
FAX: (816) 421-7758  
[email]@marc.org

## **22. COMPLIANCE WITH LAWS**

Each party hereto agrees to comply with all required federal, state and local laws and regulations applicable to such party's obligations hereunder, including Title VI of the Civil Rights Act of 1964 and non-discrimination clauses incorporated herein, and shall procure all licenses and permits necessary for the fulfillment of obligations under this Agreement.

## **23. INDEMNIFICATION FOR CLAIMS AND LIABILITY**

To the fullest extent permitted by law, Consultant agrees to indemnify, defend and hold harmless MARC from and against claims, damages, loss or expenses, including attorneys' fees, whether for bodily injury, death, property damage or otherwise, caused by or resulting from any negligent act, error or omission of Consultant, its agents, employees, sub-consultants, suppliers or invitees, growing out of or incidental to the Project, regardless of how much loss or damage is alleged to have been caused. Consultant's indemnity obligations shall not be limited by any insurance maintained by Consultant pursuant to Section 14 or otherwise, or any failure of any insurance company to pay any claim.

Except with respect to any claim, damage, loss or expense for which Consultant agrees to indemnify MARC, the total liability, in the aggregate, of Consultant to MARC for any claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way relating to this Project or Contract shall not exceed the total compensation received by Consultant or \$100,000, whichever is greater.

## **24. ATTACHMENTS**

The following exhibits are attached hereto and are made part of this contract:

Attachment A	Scope of Work
Attachment B	Fee Sheet
Attachment C	Additional Government Terms and Conditions
Attachment D	Certification Regarding Debarment, Suspension, and Ineligibility and Voluntary Exclusion
Attachment E	Certification Regarding Lobbying
Attachment F	DBE Forms 1 & 2 Demonstration of Good Faith Effort

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*[Project Name]*

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DRAFT SUBJECT TO CHANGE

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*[Project Name]*

IN WITNESS WHEREOF, the parties hereto have signed this Agreement effective is effective the date signed by MARC's Executive Director or his/her designee.

MID-AMERICA REGIONAL COUNCIL

[CONSULTANT NAME]

By: \_\_\_\_\_  
David A. Warm  
Executive Director

By: \_\_\_\_\_  
[name]  
[title]

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

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

DRAFT SUBJECT TO CHANGE

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ATTACHMENT A

**Scope of Work**

DRAFT SUBJECT TO CHANGE

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*[Project Name]*

**Attachment B  
Fee Sheet**

DRAFT SUBJECT TO CHANGE

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*[Project Name]*

Consultant:	Name of RFP:		
	Estimated		
DETAILED DESCRIPTION	Hours	Rate/Hour	Total Estimated Cost
1. Direct Labor			\$0.00
			\$0.00
			\$0.00
			\$0.00
			\$0.00
<b>A. Total Direct Labor Cost</b>	0		\$0.00
2. Burden (Overhead)			
Fringe Benefits (___%)			\$0.00
Overhead (___%)			\$0.00
<b>B. Total of Burden</b>			\$0.00
<b>C. Total Direct Costs and Burden (A+B)</b>			\$0.00
<b>D. Fixed Fee (___% applied to A+B)</b>			\$0.00
<b>E. Total Cost plus Fee (C+D)</b>			<b>\$0.00</b>
3. Other Direct Cost (includes meeting expenses, printing, etc.)			
<b>F. Total Other Cost</b>			\$0.00
4. Special Equipment			
<b>G. Total Special Equipment</b>			\$0.00
5. Travel (mileage will be reimbursed at \$0.575/mile)			
<b>H. Total Travel</b>			\$0.00
<b>I. Total Expenses (E+F+G+H)</b>			\$0.00
6. Subcontractors			
<b>J. Total Subcontractors</b>			\$0.00
<b>M. Total Estimated Cost (I+J)</b>			<b>\$0.00</b>



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## Attachment C Additional Government Terms and Conditions

- 1) **Incorporation of Federal Transit Administration (FTA) Terms.** The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in [FTA Circular 4220.1E](#) 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 Consultant shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause the City to be in violation of the FTA terms and conditions.
- 2) **No Obligation by the Federal Government.** The Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities the Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Consultant agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by USDOT. It is further agreed that the clause shall not be modified, except to identify the subconsultant who will be subject to its provisions.

- 3) **Program Fraud and False or Fraudulent Statements Acts.** The Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or a USDOT assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Consultant 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 Consultant to the extent the Federal Government deems appropriate. The Consultant 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 Consultant, to the extent the Federal Government deems appropriate.
- 4) **Access to Records.** The following access to records requirements apply to this Contract: The Consultant agrees to provide the City, MARC, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Consultant also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Consultant access to Consultant's records and construction sites pertaining to a major

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capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

- A) The Consultant agrees to provide the City, MARC, the FTA Administrator or his authorized representatives, including any PMO Consultant, access to the Consultant's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
  - B) The Consultant agrees to provide the City, MARC, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
  - C) The Consultant shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
  - D) The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
  - E) The Consultant agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than five years (5) after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Consultant agrees to maintain same until the City, MARC, 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).
- 5) **Changes to Federal Requirements.** The Consultant 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 between the City, MARC, and FTA, as they may be amended or promulgated from time to time during the term of this contract. Consultant's failure to so comply shall constitute a material breach of this contract.
- 6) **Civil Rights.** The following requirements apply to the underlying contract:
- 1) Nondiscrimination - During the performance of this contract, the Consultant agrees as follows:
    - A. The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and

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selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- B. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. The Consultant will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Consultant's legal duty to furnish information.
- D. The Consultant will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Consultant's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the Consultant's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

# CONSULTANT SERVICES AGREEMENT

*[Project Name]*

H. The Consultant will include the provisions of paragraphs (I) through (VIII) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subconsultant or vendor. The Consultant will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Consultant becomes involved in, or is threatened with, litigation with a subconsultant or vendor as a result of such direction, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

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

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

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

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

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*[Project Name]*

- D. The Consultant also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.
- 3) **Disadvantaged Business Enterprises.** This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, “*Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*”. A contract goal of   % DBE participation has been established for this project.
- A. The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure to do so may result in termination of the contract or other remedies that MARC deems appropriate, including withholding monthly progress payments, assessing sanctions, liquidated damages, and disqualifying the contractor from future bidding as non-responsible. Each subcontract the Consultant signs with a subcontractant must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- B. The Consultant is required to pay its subcontractants performing work related to this contract for satisfactory performance of that work no later than 30 days after the Consultant’s receipt of payment for that work from MARC. In addition, the Consultant is required to return any retainage payments to those subcontractants within 30 days after incremental acceptance of the subcontractant’s work by MARC and Consultant’s receipt of the partial retainage payment related to the subcontractant’s work.
- C. The Consultant must promptly notify MARC, whenever a DBE subcontractant performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractant to perform at least the same amount of work. The Consultant may not terminate any DBE subcontractant and perform that work through its own forces or those of an affiliate without prior written consent of the City.
- 4) **AMERICANS WITH DISABILITIES ACT.** The Consultant shall comply with applicable provisions of the Americans with Disabilities Act of 1991, as amended. In particular, Consultant shall assist MARC in compliance by including appropriate language in all public documents and reports notifying persons with disabilities of MARC's policy of providing accommodations (i.e. interpreter, large print, reader and hearing assistance) to persons who need such assistance to participate in the Project.
- 5) **Suspension and Debarment.** This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Consultant is required to verify that none of the Consultant, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

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

# CONSULTANT SERVICES AGREEMENT

*[Project Name]*

enters into.

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

*The certification in this clause is a material representation of fact relied upon by MARC. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to MARC, 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 Consultant further agrees to include a provision requiring such compliance in its lower tier covered transactions.*

- 6) **Lobbying.** The Consultant hereby certifies that the federal funds provided under the terms of this Agreement will not be paid, by or on behalf of the Consultant, to any person to influence an officer or employee of any federal agency or federal elected official. The Consultant will provide full disclosure of any non-federal resources expended to lobby any federal official in connection with the Project.
- 7) **Clean Air.** The Consultant 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.
- 8) **Energy Conservation.** The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

# CONSULTANT SERVICES AGREEMENT

*[Project Name]*

## **Attachment D Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion**

This Certification is required by the regulation implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98 Section 98.510, Participants' responsibilities. The Regulations are published as Part II of the June 1985, Federal Register (pages 33, 036-33, 043)

### **Read instructions for Certification below prior to completing this certification.**

1. The prospective proposer certifies, by submission of this proposal that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by any Federal department or agency.
2. Where the prospective proposer is unable to certify to any of the statements in this certification, such prospective proposer shall attach an explanation to this proposal.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signed – Authorized Representative

\_\_\_\_\_  
Title of Authorized Representative

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Instructions for Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion:

1. By signing and submitting this agreement, the proposer is providing the certification as set below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

# CONSULTANT SERVICES AGREEMENT

*[Project Name]*

## **Attachment E CERTIFICATION REGARDING LOBBYING**

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

- 1 No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersign, to any person influencing or attempting to influence an officer or employee of a federal agency, 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.
- 2 If any funds other than Federal appropriated funds have been paid or will be paid to any person for attempting to influence an officer or employee of any federal agency, Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal or Federally assisted contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- 3 The undersign shall require that the language of this certification be included in the award documents of all tiers (including subcontracts, subgrants, and contracts under grant, 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 32, US 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.

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(Name of Entity)

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(Name and Title of Authorized Official)



CONSULTANT SERVICES AGREEMENT

*[Project Name]*

**Attachment F  
DBE FORMS 1 & 2 DEMONSTRATION OF GOOD FAITH EFFORT**

FORM 1: DISADVANTAGED 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 on 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.

\_\_\_\_\_ The bidder/offeror (if unable to meet the DBE goal of \_\_\_\_\_ %)

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

State Registration No. \_\_\_\_\_

By \_\_\_\_\_  
(Signature) Title

DRAFT SUBJECT TO CHANGE

CONSULTANT SERVICES AGREEMENT

*[Project Name]*

**FORM 2: LETTER OF INTENT**

**(Submit this page for each DBE subcontractor.)**

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

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

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

Name of DBE firm: \_\_\_\_\_

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

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

Telephone: \_\_\_\_\_ e-mail address: \_\_\_\_\_

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.