



## PROFESSIONAL SERVICE AGREEMENT PF Consulting

THIS AGREEMENT ("Agreement") is between **Yamhill County** (County), a political subdivision of the State of Oregon, acting through the Yamhill County Transit Area (YCTA) and **Patricia F. Fink, an individual, doing business as PF Consulting** ("Contractor"), located at 2405 SE Ladd Avenue, Portland, Oregon 97214

### RECITALS

1. County, through its Yamhill County Transit Area, an ORS 451 County Service District, furnishes and operates public transportation services. In order for the County to provide these public transportation services it is necessary for the County to contract with qualified consultants to perform professional consulting services in connection with transit management services and perform related duties required by County as detailed in the attached Scope of Work.
2. Contractor is licensed as required by law, and is qualified to perform the duties outlined in this Agreement. County is authorized to enter into this agreement under ORS 203.010(3). NOW THEREFORE

### AGREEMENT

In exchange for the promises and other consideration set forth below, IT IS HEREBY AGREED:

**Section 1. Effective Date.** The term of this Agreement is from May 1, 2017 to June 30, 2018 unless terminated in accordance with Section 5 below. It is understood by both parties that no commitments have been or are made by either party beyond the termination of this agreement.

**Section 2. Services.** Contractor agrees to perform the services ("Services") included in the Scope of Work, including estimated hours, attached as Exhibit A to this Agreement, and incorporated herein by this reference.

**Section 3. Reporting.** County and Contractor agree to prepare and furnish reports to each other upon request. County and Contractor agree to and do hereby grant to each other the right to reproduce, use and disclose for each party's internal administration purposes only, all or any part of the reports, data, and technical information furnished under the Agreement.

**Section 4. Payment.** County agrees to pay Contractor for the services provided under this Agreement a fixed monthly rate of \$4000 from May 1, 2017 – August 1, 2017. Scope of Work Phase 1 is not to exceed \$12,000. County shall make payment to Contractor no later than the 30<sup>th</sup> day of the month following receipt, review and approval of an itemized statement for services provided in the preceding month.

B.D. 17-158



**Section 5. Termination; No Encumbrance or Expenditure after Notice of Termination.**

A. Either party may terminate this Agreement upon thirty days written notice to the other party. Termination shall not excuse liabilities incurred prior to the termination date.

B. In addition, in the event County no longer receives funds adequate to enable it to continue this Agreement, it will provide written notice of termination of this Agreement to Contractor. Upon issuance of notice, this Agreement is terminated. However, any obligations existing at the time of termination will survive termination

C. Contractor shall not make expenditures, enter into agreements, or encumber funds in its possession, or to be transferred by County, after notice of termination or termination as set out above, without prior written approval from County.

**Section 6. Independent Contractor.** Contractor is engaged under this Agreement as an independent contractor, and will be so deemed for purposes of the following:

A. Contractor will be solely responsible for payment of any federal or state taxes required as a result of this Agreement.

B. This Agreement is not intended to entitle Contractor to any benefits typically granted to County employees. Without limitation, but by way of illustration, the benefits that are not intended to be extended by this Agreement to Contractor are vacation, holiday and sick leave; other leaves with pay; tenure; medical and dental coverage; life and disability insurance; overtime; Social Security; Workers' Compensation; unemployment compensation; or retirement benefits, except as required by law.

C. Contractor is an independent contractor for purposes of the Oregon Workers' Compensation Law (ORS Ch. 656) and is solely liable for any Workers' Compensation coverage under this Agreement. If Contractor has the assistance of other persons in the performance of this Agreement, Contractor will qualify and remain qualified for the term of this Agreement as a carrier-insured employer or a self-insured employer as provided by ORS 656.403 et. seq.

**Section 7. Compliance with Applicable Laws.** Contractor agrees to comply with the rules and regulations of County, applicable state and federal regulations and all other provisions of state and federal law relating to Contractor's performance of Services under this Agreement. To the extent applicable Contractor certifies it will comply with ORS 279B.220 through 279B.235, which provisions are hereby incorporated into this Agreement by reference. Contractor will provide services to County clients without regard for race, color, religion, or national origin in compliance with Title VI, Civil Rights Act, 1954. Additionally, Contractor certifies that Contractor has complied with the tax laws of the state of Oregon or a political subdivision of the state of Oregon, including ORS 305.620 and ORS Chapters 316, 317 and 318. Contractor also agrees to comply with the Federal Transit Administration Required Terms and Conditions, attached hereto as Exhibit B and incorporated herein by this reference.

**Section 8. Indemnification.** Subject to Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act, County agrees to indemnify, hold harmless, save and defend Contractor, its officers, agents and employees against any and all claims, suits, actions, damages, costs, losses, fees, expenses or judgments resulting from, arising out of or connected with any such injury or the Services provided by County pursuant to this Agreement. Contractor agrees to indemnify, hold harmless, save and defend County, its officers, agents and employees against any and all claims, suits, actions, damages, costs, losses, fees, expenses or judgments resulting from, arising out of or connected with any such injury or the Services provided by Contractor pursuant to this Agreement.

**Section 9. Insurance.** Contractor, at Contractor's expense, shall obtain the following insurance coverage and keep such coverage in effect during the entire term of this Agreement (except with respect to Professional Liability Insurance, which shall be kept in effect for a period of the term of this Agreement plus two years):

- A. Workers' Compensation Insurance in compliance with statutory requirements;
- B. Commercial General Liability Insurance (including contractual liability and completed operations coverage, and coverage for liability resulting from hazardous substances), on an occurrence basis, with not less than \$1,000,000 per occurrence for bodily injury and property damage liability, with an annual aggregate limit of \$2,000,000;
- C. Professional Liability Insurance, including errors and omissions coverage, covering Contractor pursuant to this Agreement, with a per occurrence and aggregate limit of not less than \$1,000,000, to protect against all loss suffered by County or third parties, including financial and consequential loss, caused by error, omission, or negligent acts related to provision of the Services;
- D. Automobile Liability Insurance, with a combined single limit, or the equivalent of not less than \$250,000 per occurrence, for bodily injury and property damage with respect to Contractor's vehicles, whether owned, hired, or non-owned, assigned to, or used by Contractor in connection with the Services;

The Commercial General Liability Insurance shall (i) name the County, its directors, officers, employees and agents as additional insureds and (ii) include a cross-liability and severability of interest clause and a waiver of subrogation clause but only with respect to Contractor's activities to be performed under this Agreement. Coverage must be primary and non-contributory with any other insurance and self-insurance.

The required insurance coverages shall be (i) with insurance companies admitted to do business in the state of Oregon and rated A or better by Best's Insurance Rating, and (ii) acceptable to County. At County's request, Contractor shall furnish County with certificates of insurance for each of the required insurance coverages. The certificates of insurance shall indicate (a) the types of insurance coverage, (b) the identity of all persons or entities covered, (c) the amounts of insurance coverage, and (d) the period of insurance coverage. Any required insurance coverage shall provide that it may not be canceled except after at least 30 days written notice to County.

**Section 10. Confidentiality.** Contractor acknowledges that Contractor or his agents may, in the course of their performance under this Agreement, be exposed to or acquire information that is the confidential information of County or County clients. Any and all (i) information provided by County and marked confidential, or (ii) information identified as confidential in a separate writing, that becomes available to Contractor or its agents in the performance of this Agreement, shall be deemed to be confidential information of County (“Confidential Information”). Any reports or other documents or items, including software, that result from Contractor’s use of the Confidential Information are also deemed Confidential Information. Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information for any purposes whatsoever, except as may be provided elsewhere under this Agreement. Contractor agrees that, upon termination of this Agreement or at County’s request, Contractor will turn over to County all documents, papers and other matter in Contractor’s possession that embody Confidential Information.

**Section 11. Subcontracts; Assignment.** Contractor shall not enter into any subcontracts for any of the Services required under this Agreement without County’s prior written consent. This Agreement shall not be assigned by Contractor without the prior written consent of County.

**Section 12 Non-discrimination.** Contractor agrees that no person shall, on the grounds of race, color, religion, national origin, sex, gender, marital status, or age, suffer discrimination in the performance of this Agreement when employed by Contractor.

**Section 13. Waiver; Remedies.** County and Contractor acknowledge that any breach, violation, or default by either party of the provisions contained in this Agreement might result in damage to the other party. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**Section 14. Governing Law; Jurisdiction; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of law. Any claim, action, suit or proceeding, (collectively “Claim”) between County and Contractor that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Yamhill County for the State of Oregon. By execution of this Agreement, Contractor consents to the in personam jurisdiction of the Yamhill County Circuit Court.

**Section 15. Severability.** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.



**Section 16. Counterparts.** This Agreement may be executed by facsimile and in counterparts, which taken together shall form one legal instrument.

**Section 17. Attorney Fees and Costs.** In the event an action, suit or proceeding, including appeal therefrom, is brought for failure to observe any of the terms of this Agreement, each party shall be solely responsible for its own attorney's fees, expenses, costs and disbursements for said action, suit, proceeding or appeal.

**Section 18. Entire Agreement.** This Agreement is the entire agreement between the parties, and no statements, promises, or inducements made by either party or agent of either party that are not contained in this written Agreement shall be valid or binding. No alterations, changes, or additions to this Agreement shall be made except in a written document signed by both parties.

**Section 19. Exhibits and Recitals.** All exhibits and schedules referenced herein are incorporated herein. The recitals set forth above are incorporated into this Agreement as a material and substantive part of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth adjacent to their signatures.

**YAMHILL COUNTY, OREGON**

Stan Primozich, Chair  
Board of County Commissioners

Date: 5-11-17

\_\_\_\_\_  
Patricia F. Fink  
Tax ID No.: \_\_\_\_\_

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

APPROVED AS TO FORM

  
\_\_\_\_\_  
Christian Boenisch  
County Counsel

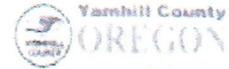
Laura Tschabold  
County Administrator

Date: 5/11/17

Accepted by Yamhill County  
Board of Commissioners on  
5-11-17 by Board Order  
# 17-158



Yamhill County  
OREGON



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YAMHILL COUNTY, OREGON

Patricia F. Fink  
Tax ID No.: 541-724808

Date: 5-17-2017

Stan Primozich, Chair  
Board of County Commissioners

Date: 5-11-17

APPROVED AS TO FORM

Christian Boenisch  
County Counsel

Laura Tschabold  
County Administrator

Date: 5/11/17

Accepted by Yamhill County  
Board of Commissioners on  
5-11-17 by Board Order  
# 17-158

**Yamhill County  
Yamhill County Transit Area (YCTA)  
Project Management and Planning  
Scope of Work  
Phase 1**

May 1, 2017 – August 1, 2017

PF Consulting (**PF**) agrees to provide project management and planning services for Yamhill County. (**PF**) will assist the Transit Manager (BCB LLC Believe Create Build) with a variety of transit related tasks.

## **Planning**

### **YCTA Transit Development Plan (TDP)**

DKS and Nelson Nygaard (**DKS/NN**) are the consultants selected through the State of Oregon Transportation Growth Management program to assist Yamhill County in developing a Transit Development Plan.

YCTA staff are responsible for a number of deliverables in addition to the DKS/Nelson Nygaard deliverables. Tasks 1 and 2 of the Transit Development Plan (**TDP**) scope of work have the majority of YCTA deliverables. Tasks 3 and 4 are handled by DKS/NN and then YCTA has responsibilities in Tasks 6 – 10.

This scope of work for Phase 1: May 1 – August 1, 2017 the consultant will assist with the following TDP deliverables as assigned by the Transit Manager. (refer to attachment A for hours/rates)

### **YCTA Transit Development Plan Deliverables from TDP Scope of Work**

- 2. A Background Information (Subtask 2.1)
- 2. B PMT\_and PAC Rosters (Subtask 2.2) **complete**
- 2. C PMT Meeting #1 (Subtask 2.3) **complete**
- 2. D Project Web Page (Subtask 2.4)
- 2. E Spanish version of On-Board Survey Questionnaire (Subtask 2.5)
- 2. F On-Board Customer Survey #1 (Subtask 2.5)
- 2. G Focus Groups (Subtask 2.6)
- 2. H Outreach Effort #1 (Subtask 2.8)
- 2. I Draft Memo #1 review and comment (Subtask 2.9)
- 2. J PAC Meeting #1 (Subtask 2.10)
- 2. K Draft Memo #2 review and comment (Subtask 2.11)
- 2. L Interim Title VI Report (Subtask 2.13) **BCB LLC/DKS/NN**

Below is a brief description of the TDP task 2 work items YCTA is responsible for.

## Attachment A

1. Background Information; YCTA shall provide DKS/NN available background information, consisting of YCTA, local, regional, and state policy and regulatory documents and existing data. (30 + documents, reports, statistics etc.)
  - a. Join and participate in base camp project management system and box.com file management system.
  - b. Team members use these tools to share information and update team members, ask questions, provide information etc.
2. Organize **Project Management Team (PMT)** meetings and prepare PMT Roster.
  - a. Identify meeting locations
  - b. Arrangements for meeting including identifying location, preparing materials
  - c. Communication with PMT members as necessary
  - d. YCTA prepares decision log documenting decisions made during the PMT meeting, notes on the discussions and next steps
3. YCTA shall organize **Project Advisory Committee (PAC)** meetings and prepare PAC roster containing member names and contact information.
  - a. Identify and solicit potential members from over 20 organizations, confirm participation, and provide information to approximately 16 PAC members.
  - b. Ongoing communication with 16 PAC members
  - c. Ensure PAC members are on appropriate mailing lists
  - d. Keep PAC members informed throughout the process
4. YCTA shall prepare a stakeholder mailing list
  - a. List to date includes over 300 contacts
  - b. Prepare mailing lists and phone call logs to keep interested parties informed throughout the process
  - c. Prepare emails and distribute emails when necessary regarding the plan to interested stakeholders
  - d. Call stakeholders when necessary who are interested in the process but do not use email.
5. YCTA develops a Project Web Page
  - a. Provide information and details for the project website to vendor hosting the project website
  - b. Post project materials
  - c. Provide ongoing updates
  - d. Respond to inquiries
6. YCTA will arrange for Spanish speaking representative for meetings and translation as necessary. YCTA responsible to arrange for surveys and other materials as necessary to be translated into Spanish
7. On-Board Survey# 1: YCTA administers on-board customer survey for one full week-day including Saturday on all YCTA fixed routes
  - a. YCTA is responsible for administering on-board data collection; collecting boarding and alighting data using forms developed by DKS/Nelson Nygaard.
  - b. YCTA assists in developing the survey instrument, reviews, edits, and approves survey
  - c. YCTA works with temporary personnel agency to arrange for staffing for the ride checks and surveys
  - d. YCTA trains temporary workers and monitors the workers and process throughout the survey/ride check process of 1 to 3 weeks depending on the number of temporary workers available.
  - e. YCTA enters data into a data collection form created by DKS/Nelson Nygaard

## Attachment A

- f. YCTA completes data entry for the completed on-board customer surveys using an electronic data entry template provided by the DKS/NN
- g. YCTA is responsible for editing and cleaning the data for the on-board survey

### 8. Focus Groups

- a. Four focus groups will be held to solicit input from a variety of population groups. The four focus groups are;
  - i. Elderly/Disabled/Local Bus Riders - Newberg
  - ii. Elderly/Disabled/Local Bus Riders- McMinnville
  - iii. Latino, limited English speaking
  - iv. Jobs Access/Education/Business
- b. YCTA identifies potential focus group participants, contacts participants, communicates and provides information
- c. YCTA finds locations and makes arrangements for meeting space and prepares necessary materials for the meeting
- d. YCTA staff shall attend all focus groups and assist with note taking
- e. YCTA assists DKS/NN with meeting summaries for each focus group and provides information to the PMT.

### 9. Outreach Effort #1

- a. YCTA organizes two in- person events held over a consecutive two-day period.
- b. Outreach events will be located at a key destination in Newberg and McMinnville (i.e. Walmart, Fred Meyer etc.)
- c. YCTA assists with development of survey instrument for this community outreach event
- d. YCTA identifies and solicits volunteers to assist with the outreach effort and prepares schedule and necessary training for the volunteers.
- e. YCTA provides copies of the survey and necessary materials for the outreach event such as tables, chairs, awning etc.

### 10. Presentations to stakeholder groups as needed

- a. YCTA prepares presentations and provides information to various stakeholder groups such as;
  - i. Service Organizations
  - ii. Latino Advocacy Committee
  - iii. Unidos
  - iv. City Councils
  - v. Senior Centers
  - vi. Area non-profits
  - vii. Transportation providers
  - viii. Other stakeholders upon request

### 11. Draft Memo #1 DKS/NN will prepare memo #1

- a. YCTA will review, edit, and provide feedback to DKS/NN regarding memo #1
- b. YCTA will distribute memo to appropriate PMT and PAC members and stakeholder groups

### 12. PAC Meeting #1

- a. YCTA organizes PAC meetings
- b. Arrangements for meeting locations, meeting materials
- c. Arrangements for translation services as needed
- d. Takes notes and prepares minutes

## Attachment A

- e. Distributes minutes to appropriate PMT and PAC and stakeholder groups
- 13. Draft Memo #2 DKS/NN will prepare memo #2
  - a. YCTA will review, edit, and provide feedback to DKS/NN regarding memo #2
  - b. YCTA will distribute memo to appropriate PMT and PAC members and stakeholder groups

## Grants/Procurement

Assist the Transit Manager with the following grant and procurement related tasks as assigned. When possible utilize state ORPIN Purchasing system and ensure local, state, and FTA guidelines are met including seeking qualified DBE vendors.

### 1.) Bus Procurement

- o Order new buses for grant agreements 31460 and 31581
  - Prepare purchase orders and other documentation as required to meet procurement guidelines

### 2.) Advanced Communication System (ACS)

#### Procuring Technology

- o Clearly define the vision of what YCTA needs from the new technology solutions.
- o Translate YCTA technology vision into technical requirements and specifications for the (RFP or similar) and draft procurement instrument.
- o Draft RFP and assist in guiding the procurement process including;
  - Selection Criteria
  - Drafting and distributing the RFP
  - Collecting and reviewing responses
  - Assisting in assembling small selection committee (County IT, First Transit, Transit Manager, etc.)
  - Ranking of proposals
  - Negotiating offers
  - Documenting the procurement process in accordance with FTA guidelines
- o Prepare purchase orders or contracts and other documentation as required to meet procurement guidelines
- o Assist with preparation for implementation of new technology with First Transit staff

### 3.) Procuring Mobile Radio System for buses

- o Develop procurement instrument
- o Work with State ORPIN system if appropriate
- o Prepare necessary forms
- o Contact vendors and handle follow up communication
- o Prepare procurement compliance forms
- o Communicate with ODOT staff as required
- o Prepare purchase orders or contracts and other documentation as required to meet procurement guidelines
- o Assist with preparation for implementation as necessary

**4.) Procuring Customer Information Enhancements included in STF Discretionary Grant (Maps, Website, Collateral Materials designed for E&D populations etc.)**

- o Develop procurement instrument
- o Work with State ORPIN system if appropriate
- o Prepare necessary forms
- o Contact vendors and handle follow up communication
- o Prepare procurement compliance forms
- o Communicate with ODOT staff as required
- o Prepare purchase orders or contracts and other documentation as required to meet procurement guidelines
- o Assist with implementation as necessary

**5.)** Finalize vendor agreements for bus shelter cleaning, maintenance, assembly, and installation.

**Miscellaneous Transit Administrative Tasks**

Assist the Transit Manager with the following grant and procurement related tasks as assigned.

**1.) YCTA and STFAC Committee Meetings**

a. Organization, communication, preparation, minutes

**2.)** ADA application process

**3.)** Review of documents

**4.)** Updates to website

**5.)** Assistance with variety of ODOT reports (DBE, NTD, ADA, Quarterly)

**6.)** Other tasks as assigned

**PF Consulting - Scope of Work –  
Phase 1 (May 1, 2017 – August 1, 2017)  
Project Management and Planning**

Tasks	BCB Hours	PF Hours	Hourly Cost	Completion Date
<b>YCTA Transit Development Plan</b>			\$85	
Task 2. A Background Information	2	3		5/30/17
Task 2. B PAC Roster-communication	3	-		8/1/17
Task 2. D Project Web Page	2	8		5/30/17
Task 2. E Spanish Version -Onboard Survey	1	2		6/30/17
Task 2. F On-Board Survey	2	26		6/30/17
Task 2. G Focus Groups	3	12		6/15/17
Task 2. H Outreach Effort #1	2	6		6/15/17
Task 2. I Draft Memo #1	1	1		5/15/17
Task 2. J PAC Meeting #1	4	4		5/4/17
Task 2. K Draft Memo#2	1	1		6/15/17
<b>Sub-total</b>	<b>121</b>	<b>63</b>		
<b>Grants/Procurement</b>				
1.) Bus Procurement	2	6		5/30/17
2.) ACS- Technology Procurement	10	35		8/1/17
3.) Radio Procurement	2	10		6/1/17
4.) Customer Enhancement Procurement	5	9		8/1/17
5.) Finalize Shelter Bid Process	1	7		5/30/17
<b>Sub-Total</b>	<b>20</b>	<b>67</b>		

**Miscellaneous Transit Administrative Tasks**

1.) YCTA/STFAC Committees	8	6	8/1/17
2.) ADA	2	3	8/1/17
3.) Website	3	8	8/1/17
4.) Reports	7	5	8/1/17
5.) Other		8	8/1/17
<b>Sub-total</b>	<sup>2</sup> 20	30	
<b>Total</b>	<b>61</b>	<sup>3</sup> 160	

1. BCB hours included in Special Projects Contract Amendment

2. BCB hours included in Management Contract

3. 160 hours x \$85/hour = \$13,600

PF Consulting has agreed to a fixed rate of \$4000/month or \$12,000 from May 1, 2017 – August 1, 2017.

## **Exhibit B: Federal Transit Administration Required Terms and Conditions**

### **No Obligation by the Federal Government**

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 express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to 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.

### **Program Fraud and False or Fraudulent Statements or Related Acts**

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 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.
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.

### Access to Records and Reports

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

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, 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 Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor'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.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 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.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, 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 Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor 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.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. 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 Purchaser, 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).

## 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 Purchaser 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.

## Termination

1. **Termination for Convenience (General Provision).** The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.
2. **Termination for Default [Breach or Cause] (General Provision).** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) 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 only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (Recipient) 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 (Recipient), 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.

3. **Opportunity to Cure (General Provision).** The (Recipient) 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 (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

4. **Waiver of Remedies for any Breach.** In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
5. **Termination for Convenience (Professional or Transit Service Contracts).** The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's

interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

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

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

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

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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

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

- a. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include:

acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

- b. The contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

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

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

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

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

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

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

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

## Civil Rights

The following requirements apply to the underlying contract:

1. **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 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:

*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. 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 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.

## Attachment C

- 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. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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.

### **Disadvantaged Business Enterprise**

1. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall, race-neutral goal for DBE participation is 8%. A separate contract goal has not been established for this procurement.
2. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as {insert agency name} deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
3. The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

### **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 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

### **Suspension and Debarment**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, 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 contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

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

The certification in this clause is a material representation of fact relied upon by {insert agency name}. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in

## Attachment C

addition to remedies available to {insert agency name}, 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.

### **Rights in Data**

The following requirements apply to each contract involving experimental, developmental or research work:

1. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
2. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
  - a. Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
  - b. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
    - (1) Any subject data developed under that contract, whether or not a copyright has been obtained; and
    - (2) Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.
  - c. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits

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

- d. Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
  - e. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
  - f. Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause , provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.
  - g. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
3. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (*i.e.* , a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

4. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

### **Patent Rights**

The following requirements apply to each contract involving experimental, developmental, or research work:

1. *General* - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
2. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
3. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

### **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.