



BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY

**REQUEST FOR QUALIFICATIONS
Q-22-10-CG
CONSTRUCTION MANAGEMENT SERVICES CONSULTANT**



Administrative Offices:
1801 Morris Avenue, Second Floor
Birmingham, AL 35203
Contact Person: Procurement Department
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BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY



REQUEST FOR QUALIFICATIONS

Q-22-10-CG

**CONSTRUCTION MANAGEMENT SERVICES
CONSULTANT**

SOLICITATION, OFFER, AND AWARD FORM



**BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY
SOLICITATION, OFFER AND AWARD FORM**

SOLICITATION INFORMATION
Request for Qualifications (RFQ)

1. SOLICITATION NO.: Q-22-10-CG 2. ISSUE DATE: 8/05/2022 3. FOR INFORMATION CONTACT: NAME: Procurement Department TELEPHONE: 205-961-5594 FAX: E-MAIL: procurebids@bjcta.org	4. BRIEF DESCRIPTION: CONSTRUCTION MANAGEMENT SERVICES (CMS) Construction Management Services Consultant (CMS) shall provide all professional, technical, managerial, administrative, and other services required for construction project management.
5. PRE-BID/PROPOSAL CONFERENCE: ***** There WILL be a conference. ***** <div style="display: flex; justify-content: space-between;"> <div> LOCATION: BJCTA INTERMODAL FACILITY 1801 Morris Avenue, Board Room Birmingham, Alabama 35203 </div> <div> DATE: Friday, August 19, 2022 </div> <div> TIME: 10:00 A.M. (CST) </div> </div>	
6. SUBMIT OFFER TO: <div style="display: flex;"> <div style="flex: 1;"> Mailing Address BJCTA INTERMODAL FACILITY 1801 Morris Avenue Birmingham, Alabama 35203 Solicitation No. Q-22-10-CG </div> <div style="flex: 1;"> Hand/Commercial Courier Delivery BJCTA INTERMODAL FACILITY 1801 Morris Avenue Birmingham, Alabama 35203 Solicitation No. Q-22-10-CG </div> </div>	7. OFFER SUBMISSION DUE DATE AND TIME: DATE: Friday, August 26, 2022 TIME: 2:00 P.M. (CST)
8. SUBMIT WITH OFFER: Original offer stamped “Original” and two (2) photocopies stamped “Copy” including exhibits and attachments indicated on Page 2 of this form.	
9. Offers submitted in response to a RFQ <u>will not</u> be opened publicly.	
10. FIRM OFFER PERIOD: Offers submitted shall remain firm for a period of 180 calendar days from the date specified in Block 7.	
11. This solicitation and any resulting contract, respectively, consist of this form and the exhibits and documents designated with a symbol ● on Page 2 of this form. NOTE: For Invitation for Bids, “offer” and “offeror” mean “bid” and “bidder”.	
OFFER (To be completed by Offeror)	
CAUTION: A false statement in any offer (bid or proposal) submitted to BJCTA may be a criminal offense.	
12. DISCOUNT FOR PROMPT PAYMENT: _____%, _____ Calendar Days	
13. In compliance with the above, the undersigned agrees, if this offer is accepted within the period specified in Block 10, above, to furnish any or all items, or provide the service(s), upon which prices are offered in the Schedule at the price set opposite each item or service, and to deliver the item(s) and or perform the service(s) at the designated location(s) within the time specified.	
14. OFFEROR'S NAME, ADDRESS, and BJCTA VENDOR NO.: (Type or Print) <div style="display: flex; justify-content: space-between;"> <div> TELEPHONE: CELL PHONE: </div> <div> E-MAIL: FAX: </div> </div>	15. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN THE OFFER: (Type or Print) 16. OFFEROR'S SIGNATURE & DATE:
AWARD (To be completed by BJCTA)	
17. DBE: The DBE participation for this contract is as follows based on: <input checked="" type="checkbox"/> Percentage of the total contract amount, or <input type="checkbox"/> Other _____ 10.5% DBE	
18. ACCEPTED AS TO:	19. TOTAL AMOUNT OF AWARD:
20. CONTRACT NUMBER:	
21. EXECUTIVE DIRECTOR / CHIEF EXECUTIVE OFFICER'S SIGNATURE & DATE OF AWARD:	
<div style="display: flex; justify-content: space-between;"> <div>Name: _____</div> <div>Signature: _____</div> <div>Date: ____/____/____</div> </div>	

SOLICITATION, OFFER AND AWARD FORM

☞ See Exhibits B & C for offer preparation and submission instructions.

22. CONTENTS:

	NAME	FORM DESCRIPTION	FORM NO.	SUBMIT WITH OFFER?
●	Cover Sheet	Solicitation, Offer and Award Form	BJCTA SOA	YES
○	Schedule	Schedule	BJCTA Bid Schedule	NO
●	Exhibit A	Representations and Certifications	BJCTA Reps & Certs	YES
●	Exhibit B	Special Solicitation Instructions and Conditions		
●	Attachment 1	Schedule of Subcontractor(s)/Subconsultant(s)	None	YES
●	Attachment 2	BJCTA Offeror's Accounting System Certification	None	YES
●	Attachment 3	Certificate of Current Cost or Pricing Data	None	YES
●	Exhibit C	Solicitation Instructions and Conditions	BJCTA Solicitation Instructions	
●	Exhibit D	Special Provisions		
●	Exhibit E	Addendum to General Provisions		
●	Exhibit F	General Provisions	BJCTA General Prov.	
●	Exhibit G	Disadvantaged Business Enterprise		
○	Attachment 1	Intent to Perform as a Subcontractor	None	YES
○	Attachment 2	Sample Vendor Payment Report	None	
●	Exhibit H	Statement of Work/Scope of Services		
○	Exhibit I	Specifications		
○	Exhibit J	Drawings		
○	Exhibit K	Geotechnical Report(s)		
●	Exhibit L	Business Questionnaire		YES
○	Exhibit M	BJCTA Construction Safety and Security Program	None	
○	Exhibit N	BJCTA Insurance Administration Manual and Claim Procedures	None	
●	Exhibit O	Solicitation Question Submission Form		
●	Exhibit P	Appropriate Fiscal Year Labor Rates		YES
●	Exhibit Q	Appropriate Fiscal Year Overhead Rates		YES
●	Exhibit R	Appropriate Fiscal Year Schedule of Deliverables		YES
○	Exhibit S	Wage Rates No. _____ Dated: _____	None	
●	Exhibit T	Miscellaneous Expense Policy (Cost-type Contracts)		
●	Exhibit U	Buy America Certificate Iron/Steel/Manufactured Products		YES
○	Exhibit V	Employee Information Report		NO
○	Exhibit ____			

23. SUBMIT THE BELOW ITEM(S) WITH OFFER, IN ADDITION TO THE ABOVE IDENTIFIED SUBMITTALS:

	DESCRIPTION
○	TECHNICAL PROPOSAL (ACCEPTED AS IDENTIFIED IN BLOCK 18)

24. ACKNOWLEDGMENT OF AMENDMENTS:	AMENDMENT #	DATE	AMENDMENT #	DATE
Offeror acknowledges receipt of the following amendment(s) to the solicitation: (Identify amendment number and date of each.)				

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY



REQUEST FOR QUALIFICATIONS

Q-22-10-CG

**CONSTRUCTION MANAGEMENT SERVICES
CONSULTANT**

EXHIBIT A

**BJCTA REPRESENTATIONS AND
CERTIFICATIONS**

EXHIBIT A REPRESENTATIONS AND CERTIFICATIONS

** NOTE: THIS FORM MUST BE COMPLETED AND RETURNED WITH THE OFFER **

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REPRESENTATIONS

1. Affirmative Action Compliance

(a) The offeror represents as part of its offer that it has a workforce of (# of employees):

(b) It (Mark one with an "X"):

- ☐ has developed and has on file
- ☐ has not developed and does not have on file

at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or it (Mark one with an "X"):

- ☐ has ☐ has not

previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

Contingent Fee

Except for full-time bona fide employees working solely for the offeror, the offeror represents as part of its offer that it (Mark one with an "X"):

- ☐ has ☐ has not

employed or retained any company or persons to solicit or obtain this contract, and (Mark one with an "X"):

EXHIBIT A REPRESENTATIONS AND CERTIFICATIONS

☐ has ☐ has not

paid or agreed to pay any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

2. Covenant Against Gratuities

The offeror represents as part of its offer that neither it nor any of its employees, representatives or agents have offered or given gratuities (in the form of entertainment, gifts or otherwise) to any director, officer or employee of the Authority with the view toward securing favorable treatment in the awarding, amending, or the making of any determination with respect to the performing of the contract. See the General Provisions Clause entitled "Interest of Public Officials."

3. Disadvantaged Business Enterprise (DBE)

The offeror represents as part of its offer that it (Mark one with an "X"):

☐ is ☐ is not

a disadvantaged business enterprise (DBE). A DBE is defined as "a for-profit small business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or in case of any publicly owned business, at least 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it." For purposes of this definition, socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Asian-Pacific Americans, Subcontinent Asian Americans, Native Americans; women; and any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.

4. Interest of Public Officials

The offeror represents and warrants that no employee, official, or member of the Board (Executive Committee) of the Authority is or will be pecuniarily interested or benefited directly or indirectly in this contract.

5. Parent Company and Identifying Data

(a) The offeror represents as part of its offer that it (Mark one with an "X"):

☐ is ☐ is not

owned or controlled by a parent company. A parent company, for the purpose of this provision, is one that owns or controls the activities and basic business policies of the offeror. To own the offering company means that the parent company must own more than 50 percent of the voting rights in that company. A company may control an offeror as a parent even though not meeting the requirements for such ownership if the company is able to formulate, determine, or veto basic policy decisions of the offeror through the use of dominant minority voting rights, use of proxy voting, or otherwise.

(b) If the offeror is not owned or controlled by a parent company, it shall insert its own Employer's Identification Number below:

EXHIBIT A REPRESENTATIONS AND CERTIFICATIONS

(c) If the offeror is owned or controlled by a parent company, it shall enter in the blocks below the name and primary office address of the parent company, and the parent company's Employer's Identification Number.

NAME OF PARENT COMPANY AND MAIN OFFICE ADDRESS
(include ZIP and phone):

PARENT COMPANY'S EMPLOYER'S IDENTIFICATION #:

6. Previous Contracts and Compliance Reports

(a) The offeror represents as part of its offer that it (Mark one with an "X"):

☐ has ☐ has not

participated in a previous contract or subcontract subject either to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 310 of Executive Order Number 10925, or the clause contained in Section 201 of Executive Order Number 11114; and

(b) It (Mark one with an "X"):

☐ has ☐ has not

filed all required compliance reports.

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontractor awards.

7. Type of Business

(a) The offeror represents as part of its offer that it operates as (Mark one with an "X"):

☐ an individual ☐ a sole proprietorship
☐ a partnership ☐ a corporation
☐ another entity _____.

(b) If incorporated, under the laws of the State of:

(c) Age of the firm: ____ years, ____ months

(d) Previous year's annual gross receipts:

☐ less than \$500K ☐ \$500K - \$2 mil. ☐ \$2 mil. - \$5 mil. ☐ more than \$5 mil.

EXHIBIT A
REPRESENTATIONS AND CERTIFICATIONS

CERTIFICATIONS

8. Certification of Independent Price Determination

(a) By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:

(1) The prices in this offer have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor.

(2) Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to the opening (in the case of an advertised procurement) or prior to award (in the case of a negotiated procurement), directly or indirectly to any other offeror or to any competitor; and

(3) No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.

(b) Each person signing this offer certifies that:

(1) He is the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein and that he has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or

(2) He: (i) is not the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein but that he has been authorized in writing to act as an agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above, and as their agent does hereby so certify; and (ii) has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above.

9. Certification of Non-Segregated Facilities

(a) By the submission of this offer, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control, where segregated facilities are maintained.

(b) The offeror agrees that a breach of this certification is a violation of the Equal Opportunity Clause in the contract.

(c) As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or nation origin, because of habit, local custom or otherwise.

(d) It further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will:

(1) obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;

(2) Retain such certifications in its files; and

(3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods).

EXHIBIT A REPRESENTATIONS AND CERTIFICATIONS

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract under which the subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for such subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

Note: the penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

10. Certification of Restrictions on Lobbying

This Certification is applicable if the offer exceeds \$100,000.

(a) By submission of this offer, the offeror certifies, to the best of his or her knowledge or belief, that:

(1) No Federal appropriated funds have been paid, or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, or 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 influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure of Lobbying Activities, in accordance with its instructions [as amended by "Government-wide Guidance for New restrictions on Lobbying," Fed. Reg. 1413 (1/19/96)].

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

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

11. Clean Air and Water Certification

Applicable if the offer exceeds \$100,000, or the Procurement Officials believes that orders under an indefinite contract in any year will exceed \$100,000, or a facility to be used has been the subject of a conviction under the Air Act [42 U.S.C. 7413(c)(1)] or the Water Act [33 U.S.C. 1319 (c)], and is listed by the Environmental Protection Agency (EPA) as a violating facility, and the acquisition is not otherwise exempt.

By submission of this offer, the offeror certifies that:

(a) Any facility to be used in the performance of this proposed contract (Mark one with an "X"):

☐ is ☐ is not listed on the EPA List of Violating Facilities;

(b) It will immediately notify the Procurement Officials, before award, of the receipt of any communication from the Administrator, or a designee of the EPA, indicating that any facility which it proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and

(c) It will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

EXHIBIT A REPRESENTATIONS AND CERTIFICATIONS

12. Certificate Concerning Board Members and Employees of the Authority

The Birmingham-Jefferson County Transit Authority (BJCTA) has adopted Rules of Procedure for BJCTA Board members and BJCTA personnel policies for employees that prohibit their participation in contractual or employment relationships for certain periods after their relationship with BJCTA ends. These restrictions also apply to the spouses of former Board members and former employees.

For former Board members, the prohibition is for a period of one year following the end of the member's term or the date of his/her resignation and applies to participation as a principal in a BJCTA contract or first-tier subcontract, or as an employee of a BJCTA contractor or first-tier subcontractor. For former BJCTA employees, the prohibition is for one year after leaving BJCTA, and relates to participation in any contract or employment relationship that results in an assignment to work on any BJCTA project for which the employee had significant responsibilities.

The Board of Directors may waive the above prohibitions, by a two-thirds vote, for a particular person and/or relationship if it determines that it is in the best interest of BJCTA to do so.

(a) By submission of this offer the offeror hereby certifies that, to the best of his/her knowledge and belief, with the exception of any information described in this certification or attached hereto, the offeror has no information concerning a violation or possible violation of the BJCTA Board Rules of Procedures, or the above BJCTA personnel policy for former employees, which would result if the Authority awards a contract based upon this offer.

(b) Violations or possible violations. (Continue on plain bond paper and label Certificate Concerning Former Board Member and Employees of the Birmingham-Jefferson County Transit Authority, Continuation Sheet.) CHECK "NONE" IF NONE EXISTS.

☐ **NONE**

(Please make entry in this space if applicable)
VIOLATIONS OR POSSIBLE VIOLATIONS:

(c) This certification concerns a material representation of fact upon which reliance will be placed in awarding a contract. If it is later determined that the offeror knowingly rendered an erroneous certification, in addition to any other remedies the Authority may have, the Procurement Officials may terminate the contract resulting from this solicitation for default and/or recommend that the offeror be debarred or suspended from doing business with the Authority in the future in accordance with the procedures set forth in the BJCTA Procurement Policy Manual.

(d) The offeror shall provide immediate written notice to the Procurement Officials if, at any time prior to contract award, he/she learns that the certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(e) The offeror further agrees by submitting this bid/offer that it will include this Certificate, without modification, in all first-tier subcontracts. The offeror shall be responsible for compliance by any first-tier subcontractor with the provisions set forth in this Certificate.

13. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion

(a) Primary Covered Transactions. [This certification applies to the offer submitted in response to this solicitation and will be a continuing requirement throughout the term of the prime contract.]

(1) In accordance with the provisions of Appendix A to 49 Code of Federal Regulations (CFR) Part 29, the offeror certifies to the best of its knowledge and belief, that it and its principals:

EXHIBIT A
REPRESENTATIONS AND CERTIFICATIONS

(i) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(ii) Have not within a three-year period preceding this offer been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(iii) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(ii) of this Certification; and

(iv) Have not within a three-year period preceding this offer had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the offeror is unable to certify to any of the statements in this certification, the offeror shall attach an explanation to this offer.

(b) Lower Tier Covered Transactions. [This certification applies to a subcontract at any tier expected to equal or exceed \$25,000 and will be a continuing requirement throughout the term of the prime contract.]

(1) In accordance with the provisions of Appendix B to 49 Code of Federal Regulations (CFR) Part 29, the prospective lower tier participant (subcontractor) certifies, by submission of this offer, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

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

(c) The Certification required by subparagraph (b), above, shall be included in all applicable subcontracts and a copy kept on file by the prime contractor. The prime contractor shall be required to furnish copies of certifications to the Procurement Officials upon the Procurement Official's request.

14. Communication Policy and Certification

(a) All oral and written communications with BJCTA regarding this solicitation should be exclusively with, or on subjects and with persons approved by, the person identified in Block 3 for Award/Contract Form of the solicitation cover sheet. Discussions or communications with any other person could result in disclosure of proprietary or other competitive sensitive information or otherwise create the appearance of impropriety or unfair competition and, thereby, compromise the integrity of BJCTA's procurement system. If competition issues cannot be resolved through normal communication channels, the BJCTA Procurement Policy contain protest provisions for actual or prospective competitors claiming any impropriety in connection with this procurement.

EXHIBIT A REPRESENTATIONS AND CERTIFICATIONS

(b) By submission of this offer, the offeror certifies that it has not, and will not prior to contract award, communicate orally or in writing with any BJCTA employee or other representative (including BJCTA Board members, BJCTA contractors, or BJCTA consultants) other than the individual, or person(s) and on subjects approved by the individual, named in Block 3 for Award/Contract Form of the solicitation, except as described below: (CHECK "NONE" IF NONE EXISTS.)

☐ **NONE**

Name of BJCTA
Representative

Date and Subject of Communication

{provide attachment, if necessary}

(c) This certification concerns a material representation of fact upon which reliance will be placed in awarding a contract. If it is later determined that the offeror knowingly rendered an erroneous certification, in addition to any other remedies the Authority may have, the Procurement Officials may terminate the contract resulting from this solicitation for default and/or recommend that the offeror be debarred or suspended from doing business with the Authority in the future in accordance with the procedures set forth in BJCTA's Procurement Policy Manual. In addition, a false entry could be a violation of Alabama State law.

(d) The offeror shall provide immediate written notice to the Procurement Official if, at any time prior to contract award, he/she learns that its certification was, or a subsequent communication makes, the certification erroneous.

15. Conflict of Interest Certification

This Certification is required to be completed if the solicitation is a Request for Proposals (not required for Invitation for Bids).

By submission of this proposal, I certify that:

(a) I have read and understand the General Provisions clause entitled "Interest of Public Officials" that will be incorporated into any contract resulting from this solicitation. I further understand that the pecuniary interest in that clause includes employment relationships.

(b) I understand the Authority has an internal conflict of interest policy for its employees which includes as an actual or possible conflict of interest whether or not a member of the employee's immediate family works for a firm doing, or seeking to do, business with the Authority.

(c) Mark one with an "X":

- ☐ To the best of my knowledge and belief, no employee of my firm is related to an Authority employee; or
- ☐ An employee of my firm is related to an Authority employee and a letter to the Procurement Official explaining that relationship is attached to this Exhibit A, Representation & Certifications.

(d) The requirement of this certification has been passed through to all first-tier subcontractors or subconsultants anticipated to be used at the time of the submission of my proposal.

EXHIBIT A
REPRESENTATIONS AND CERTIFICATIONS

16. Disadvantaged Business Enterprise Goals

If goals have been established, by submission of this offer, the offeror certifies that it will comply with the provisions of Exhibit G entitled "Disadvantaged Business Enterprise Provisions," and will meet such goals as are established in any ensuing contract.

17. Contractor Certification Regarding Boycotting Israel

Alabama State law prohibits BJCTA from entering into a contract with a for-profit company for goods or services unless the contract contains a written verification from the company that it:

- (a) Does not boycott Israel; and
- (b) Will not boycott Israel during the term of the contract.

Boycotting Israel includes refusing to deal with, terminating business activities with, or otherwise taking any action intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or with an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

By submission of this offer, the offeror certifies that it does not boycott Israel as defined and will not boycott Israel during the term of the contract.

If BJCTA determines the offeror/contractor has violated these terms, the Agency may pursue any legal claims it may have against the offeror/contractor, including termination of the contract for default.

18. Contractor Certification Regarding Terror State Contracting Divestiture Act

BJCTA is prohibited from contracting with a business for goods or services if that business is engaged in business operations with the Sudanese or Iranian governments, or a foreign terrorist organization designated by the U.S. State Department.

By submission of this offer, the offeror certifies that it does not and will not engage in business operations with the Sudanese or Iranian governments, or a foreign terrorist organization designated by the U.S. State Department during the term of this contract.

If BJCTA determines the offeror/contractor has violated these terms, the Agency may pursue any legal claims it may have against the offeror/contractor, including termination of the contract for default.

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY

EXHIBIT A
REPRESENTATIONS AND CERTIFICATIONS

**SIGNATURE BLOCK FOR ALL
REPRESENTATIONS & CERTIFICATIONS**

NAME OF OFFEROR & ADDRESS (Include ZIP & phone)

OFFERORS MUST SET FORTH FULL, ACCURATE AND COMPLETE INFORMATION AS REQUIRED BY THIS SOLICITATION (INCLUDING THIS ATTACHMENT). FAILURE TO DO SO MAY RENDER THE OFFER NONRESPONSIVE OR UNACCEPTABLE.

A FALSE STATEMENT IN ANY OFFER SUBMITTED TO THE AUTHORITY MAY BE A CRIMINAL OFFENSE IN VIOLATION OF ALABAMA STATE LAW.

Signature:

Date:

TYPE NAME:

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY



REQUEST FOR QUALIFICATIONS

Q-22-10-CG

**CONSTRUCTION MANAGEMENT SERVICES
CONSULTANT**

EXHIBIT B

**BJCTA SPECIAL SOLICITATION INSTRUCTIONS
AND
CONDITIONS**

EXHIBIT B
SPECIAL SOLICITATION INSTRUCTIONS AND CONDITIONS

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Type of Contract

This is a Fixed Priced Indefinite Delivery Indefinite Quantity (IDIQ) task order contract for the services specified in the Scope of Services. Task Orders will be based on level of effort.

2. Scope of Services

The Contractor shall furnish and perform all professional, technical, managerial, administrative, and other services in connection with the Scope of Services, each phase of the work is subject to fiscal funding constraints. BJCTA reserves the right to modify the scope of services to fit within financial constraints

3. Term of Contract

The term of this contract shall have a base term of two (2) calendar years with two (2) one (1) year options from receipt of a written Notice to Proceed.

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4. Option to Extend Term

(a) BJCTA may extend the term of this contract by written notice to the Contractor at least seven (7) days prior to the expiration of the contract; if feasible, BJCTA shall, give the Contractor preliminary written notice of its intent to extend at least sixty (60) days before the contract expires. The preliminary notice does not commit BJCTA to an extension, and the absence of such notice shall not affect the validity of any exercise of the option to extend the term of this contract.

(b) If BJCTA exercises this option, the extended contract shall be considered to include this option provision.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed four (4) years.

5. Option to Extend Services

BJCTA may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed six (6) months. The Procurement Official may exercise the option by written notice to the Contractor within 3 days before the expiration of the performance period of this contract.

6. Notice to Proceed

The Contractor shall not proceed with any work required under this contract without a written Notice to Proceed from BJCTA. Any work performed or expenses incurred by the Contractor prior to the Contractor's receipt of Notice to Proceed shall be entirely at the Contractor's risk.

7. Availability of Funds (Multi-Term)

BJCTA's obligation for performance of this contract beyond the current fiscal year is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of BJCTA for any payment may arise for performance under this contract beyond the current fiscal year, until the Contractor receives notice of availability of funds, in writing, from the Procurement Official.

8. Task Orders

(a) Services and materials to be furnished under this contract shall be obtained by the issuance of a written task order signed by the Procurement Official. Task orders will have a negotiated not-to-exceed (NTE) price based on fixed unit prices for labor for the anticipated labor mix and cost reimbursement for the approved materials costs for the specified task. The Procurement Official will definitize the order. There is no limit to the total number of written task orders that may be issued against this contract. No payment shall be made to the Contractor for services or materials supplied without the prior issuance of a written task order.

(b) Prior to the issuance of a written task order, BJCTA will contact the Contractor by telephone, FAX, or other means, and describe the scope of the task BJCTA desires to accomplish. BJCTA will provide a due date for submission of the Contractor's proposal. The Contractor shall develop a written proposal indicating its approach to the described task, the various labor categories and rates per the Schedule, the not-to-exceed hours, and extended amounts. The proposal will contain an itemized cost breakdown associated with the successful completion of the task (inclusive of labor hours and material); and a schedule for completion of the task. The Contractor shall take the following items into consideration when developing their proposal:

- 1) A production or work effort itinerary must accompany the proposal when production is required.

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(2) The proposal will represent the complete cost per task and not per element. This is to include time, project management, production, planning, and other activities associated with the task order.

(3) All work effort in the proposal that involves subcontractors must be included as a joint plan rather than individual plans from the subcontractors.

(c) Following the Authority's examination of the proposal, and the schedule for completion of the task, a written task order may be issued. The written task order shall include the description of the work, the schedule for completion, and the not-to-exceed price (fixed unit costs for labor and estimated costs for materials).

(d) The work performed under this contract, and the number of labor hours and materials provided under each task order, shall be monitored by BJCTA as the work progresses for each task order. The Contractor shall immediately notify BJCTA whenever it has reason to believe the effort to complete the task will exceed the NTE price of the task order. As part of the notification, the Contractor shall provide a revised estimate with supporting documentation for the total estimated price to complete the work. The Authority shall examine the revised estimate to determine if the price should be revised. Revisions to task orders shall be made in writing.

(e) If the terms of the task order issued by BJCTA permit, the Contractor may invoice the amount for specific items if those items, in the normal course of business, require advance payments. These items may include payments for subcontractors and suppliers but must be specifically identified in the task order. The remaining portion of the task order will be invoiced in conjunction with billing documentation that the work has been completed and approved.

(f) BJCTA is not obligated to reimburse the Contractor for costs incurred in excess of the price for a task order unless the task order is revised to reflect the increase. The Contractor is not authorized to perform work in excess of the task order amount.

(g) Orders issued during the contract term, but not completed within the contract term, shall be completed by the Contractor within the time specified in the task order.

(h) No notice, communication, or representation in any form other than that specified above, or from any person other than the Procurement Official, shall affect the not-to-exceed dollar value of this contract. In the absence of the specified notice, BJCTA is not obligated for any amount that is in excess of the not-to-exceed dollar value of this contract.

(i) All task orders are subject to the terms and conditions of this contract. In the event of conflict between a task order and this contract, the contract shall control. Task orders shall be issued by BJCTA at least one (1) day prior to the required date for services.

(j) BJCTA reserves the right to issue a task order to cover costs associated with attending planning conferences.

(k) Failure of BJCTA to order the estimated quantities shown on the Schedule shall in no way entitle the Contractor to an equitable adjustment under this contract.

9. Fixed-Fee

(a) BJCTA shall pay the Consultant, for performing this contract. This fixed-fee shall be established in accordance with the fixed-fee formula established for the original contract.

(b) Payment of the fixed-fee by BJCTA shall be made according to the Level of Effort negotiated performed per task order. BJCTA may withhold a portion of the fixed-fee until final acceptance of the work.

(c) The fixed-fee shall be based on the task order negotiated amount, agreed-to by both parties, to complete the work.

(a) Fee will be negotiated per task order based on the risk associated with the task.

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10. Labor Rates

For the purpose of this contract, BJCTA and the Consultant shall negotiate labor rates for each task order.

11. Indirect Cost Rates

(a) Notwithstanding the Allowable Cost and Payment Provision of this contract, the indirect costs for both project office and home office under this contract shall be obtained by applying indirect cost rates (overhead billing rates) to the Consultant's direct labor costs, as agreed by the parties.

(b) The indirect cost rates shall be based on either the Consultant's or any Subconsultant's indirect cost rates. Negotiations of the indirect cost rates shall begin as soon as practicable after receipt of the Consultant's proposal. Indirect cost rates will be negotiated for each firm (joint venture member, subconsultant, etc.).

(c) The Procurement Official and Consultant shall negotiate rates for the period of performance, as follows: (1) the agreed upon indirect cost rates; (2) the basis to which the rates apply; (3) the period of performance, unless the parties agree to a different period, for which the rates apply; and (4) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs. The indirect cost rate agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The agreement is incorporated into this contract upon execution.

(d) The establishment of an indirect cost rate by the Procurement Official shall not be considered a dispute under the Disputes clause of the contract.

(e) It is the intent to negotiate fixed indirect cost rates for home office and field overhead for the duration of the contract.

12. Indirect Cost Schedules

For the purpose of this contract, including preparation of your cost proposal and contract negotiations, indirect cost rates (overhead billing rates) are established for the Consultant and each subconsultant for the term of the contract.

(a) Consultant and subconsultants indirect Field rates shall be applied to direct labor performed while located in the BJCTA Offices (if applicable).

(b) Consultant or subconsultants indirect Home Office rates shall be applied to direct labor performed while located in the Home Office.

The Home Office indirect rate shall be applied to an employee assigned to the BJCTA Offices for a period less than six (6) months during the term of the contract. If any personnel have been assigned to the Project Office during the term of the contract and are continued for a portion of the contract period of performance, the six (6) months shall apply from the original assignment date.

13. Release of Key Personnel

The Contractor has identified, by both, name and position, those personnel who occupy positions designated as "key personnel" for the administration and management of work under this contract. Project Manager shall always be designated "key personnel." Other contractor personnel may be so designated with the concurrence of the Procurement Official or the Procurement Official's Representative (COR). The Contractor may reassign key personnel during the performance of work under this contract, but the following sums shall be paid to if such personnel are reassigned or removed from work under this contract: A) for reassigning the Project Manager, the sum of \$15,000.00 shall be paid; B) for reassigning any other key personnel, the sum of \$10,000.00 shall be paid for each employee so designated and reassigned. If any person in a key personnel position chooses to leave the firm, and therefore the BJCTA project, for other reasons than the firm choosing to reassign the employee, this provision does not apply.

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These sums shall be deducted from amounts due and owing the contractor for work performed under this contract. The parties further agree that these sums constitute liquidated damages and shall not be construed as a penalty, nor shall they be subject to the Disputes Clause under this contract.

14. Subcontractor Agreements

The Contractor shall submit a copy of all Subcontractor Agreements entered into performance of this contract within thirty (30) days after the Agreement is executed.

15. Standard of Care

(a) "Acceptance, "as used in this clause, means the act of an authorized representative of BJCTA by which BJCTA assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of the contract. "Correction," as used in this clause, means the elimination of a defect.

(b) Notwithstanding inspection and acceptance by BJCTA or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Procurement Official shall give written notice of any defect or nonconformance to the Contractor. This notice shall state either (1) that the Contractor shall correct or reperform any defective or nonconforming services, or (2) that BJCTA does not require correction or reperformance.

(c) If the Contractor is required to correct or reperform, it shall be at no cost to BJCTA, and any services corrected or reperformed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Procurement Official may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to BJCTA thereby, or make an equitable adjustment in the contract price.

(d) If BJCTA does not require correction or reperformance, the Procurement Official shall make an equitable adjustment in the contract price.

16. Technical Support

The Contractor agrees to provide technical support at BJCTA's direction and expense for all scope of services.

17. Communications

(a) Official communications in connection with this Contract shall be in writing and delivered either personally, by facsimile, or by regular, registered, or certified mail addressed to the BJCTA assigned Procurement Official. Telephone calls may be used to expedite communications, but they shall not be considered "official" unless confirmed in writing.

(b) A communication shall be deemed to have been "received" when it is in the actual possession of the person to whom it is addressed or that person's designated agent. For purposes of fixing the date and time of actual receipt, that date and time shall be placed on the communication and become part of the communication for the record.

18. Improper Communications and Contacts

The following rules of this contact shall apply during the procurement of this solicitation, which begins with the date of issuance of the solicitation. These rules are designed to promote a fair and unbiased procurement process. Contact includes face-to-face, telephone, facsimile, electronic mail (e-mail), or formal written communication.

The specific rules of contact are as follows:

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- (a) After submittal of proposal no Offeror, or any of its team members, may communicate with another Offeror, or its team members, with regard to the proposal, or either team's proposal, except, the team members that are shared between two or more Offerors may communicate with their respective team members so long as those Offerors establish a protocol to ensure that the subconsultant will not act as a conduit of information between the teams (contact among Offeror organizations is allowed during BJCTA sponsored informational meetings);
- (b) The Offerors shall correspond with BJCTA regarding the solicitation only through BJCTAs assigned Procurement Official and each Offeror's designated representatives.
- (c) Commencing with the issuance of this solicitation and continuing until the earliest of (i) award and execution of the contract, (ii) rejection of all Offerors by BJCTA or (iii) cancellation of the procurement, no Offeror or representative thereof shall have any communications regarding the solicitation or the procurement, described herein, with any member of the BJCTA Board of Directors or with any BJCTA staff, advisors, Consultants or consultants involved with this procurement.

The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the solicitation or the procurement or from participating in public meetings of the Commission or any public or Offeror workshop related to this RFP. Any Offeror engaging in such prohibited communications may be disqualified at the sole discretion of BJCTA.

- (d) The Offerors shall not contact stakeholders regarding this procurement, including employees, representatives, and members of the BJCTA Board of Directors.
- (e) Offerors shall not contact BJCTA or any of its employees, representatives, or members regarding the procurement, with the contact after issuance only to the extent authorized in the solicitation and under the terms and conditions set forth therein.
- (f) Any communications determined to be improper, at the sole discretion of BJCTA may result in disqualification.
- (g) Any official information regarding this solicitation will be disseminated from BJCTA's Contracts Administrator issuance of an amendment. Any official correspondence will be in writing and signed by BJCTAs Procurement Official.
- (h) BJCTA will not be responsible for any oral exchange or any other information or exchange that occurs outside of the official process specified herein.

19. Organizational Conflict of Interest

- (a) The Procurement Official has determined that this acquisition may give rise to a potential for an organizational conflict of interest. Accordingly, the Prime Consultant's attention is referred to BJCTAs Procurement Regulations, specifically, Section "Definitions," in which an organizational conflict of interest exists when the nature of the work to be performed under the contract may, without some form of restriction on future activities, result in an unfair competitive advantage to the Consultant.
 - (1) The Consultant shall have access to confidential and/or sensitive BJCTA information in the course of contract performance. Additionally, the Consultant may be provided access to proprietary information obtained from other contracted entities during contract performance. The Consultant agrees to protect all such information from disclosure unless so authorized, in writing, by the Procurement Official or designee, and to refrain from using such information for any purpose other than that for which it was furnished.
 - (2) To the extent that the Consultant either (a) uses confidential and/or sensitive BJCTA information or proprietary information obtained from other BJCTA Consultants to develop any form of document, report, or plan that is determined

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by the Procurement Official to be the basis, in whole or in part, of any subsequent solicitation issued by BJCTA or (b) develops written specifications that are used in any subsequent solicitation issued by the Authority, the Consultant agrees that it shall not be eligible to compete for such subsequent solicitation(s) as a prime or principal Consultant or as part of any teaming arrangement unless the Procurement Official or designee provides, in writing, a specific waiver of this restriction. The duration of any restriction imposed under this subparagraph shall not exceed the length of the initial performance period of any subsequently awarded contract for which the Consultant was ineligible to complete.

(b) The Consultant, by acceptance of this contract and performance hereon, agrees to the above stated conditions and terms and further agrees to perform all task orders assigned under the contract and, in doing so, not to enter into contractual agreements with BJCTAs prime Consultants and first tier subconsultants in such a way as to create an organizational conflict of interest.

(d) If the Procurement Official determines that the Consultant has violated any term of the above stated agreement, the Procurement Official may take any appropriate action available under the law or regulations to obtain redress to include, but not be limited to, requiring the Consultant to terminate any affiliation or contractual arrangement with an BJCTA prime Consultant or first-tier subconsultant at no cost to BJCTA; determining the Consultant ineligible to compete for or be awarded any subsequent or "follow-On" contracts that may be based upon the Consultant's actions under this contract or violations of the above referenced agreement, or terminating this contract, in whole or in part.

20. Restrictions on Eligibility for Future Contracts

(a) The following restrictions apply to prevent conflicting roles that may bias the Contractor's judgment or objectivity, or to preclude the Contractor from obtaining an unfair competitive advantage in concurrent or future procurements. Accordingly,

(1) If the Contractor, under the terms of this contract, or through the performance of tasks pursuant to this contract, and to the extent that the Contractor either (A) uses confidential and/or sensitive BJCTA information, or proprietary information obtained from other BJCTA contractors, to develop any form of document, report, or concept plan that is determined by the Procurement Official to be the basis, in whole or in part, of any subsequent competitive solicitation issued by BJCTA, or (B) develops written specifications or work statements that are used in any subsequent competitive solicitation issued by BJCTA, the Contractor agrees that it shall not be eligible to compete for such subsequent competitive solicitation(s) as a prime contractor or first-tier subcontractor, or as part of any teaming arrangement, unless the Procurement Official provides, in writing, a specific waiver of this restriction. The duration of any restriction imposed under this subparagraph shall not exceed the length of the performance period of any subsequently awarded contract for which the Contractor is ineligible to compete.

(2) To the extent that the work under this contract requires access to proprietary, business confidential or financial data of BJCTA and/or of other companies and, as long as these data remain proprietary or confidential, the Contractor shall protect these data from unauthorized use and disclosure and agrees not to use them to compete with those other companies.

(b) The Contractor, by acceptance of this contract and performance thereof, agrees to the above stated terms and conditions; and shall not enter into contractual agreements with BJCTAs prime contractors and first-tier subcontractors in such a way as to create an organizational conflict of interest.

If the Procurement Official determines that the Contractor has violated any term of the above stated agreement, the Procurement Official may take any appropriate action available under the contract, law or regulation to obtain redress to include, but not be limited to: requiring the Contractor to terminate any affiliation or contractual arrangement with an BJCTA prime contractor or first-tier subcontractor at no cost to BJCTA; determining the Contractor ineligible to compete for or be awarded any subsequent or follow-on competitive contracts that may be based upon the Contractor's actions under this contract, or violations of the above referenced agreement; or terminating this contract, in whole or in part.

(d) The Contractor agrees to notify BJCTA, in writing, within five (5) working days after it becomes aware of any potential or actual organizational conflict of interest pursuant to the above.

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- (a) Invoices may be submitted once per month, or if indicated in the task order, upon completion of milestones, electronically to:
accountspayable@bjcta.org
- (b) Payment shall be made within the time period allowed by law through the Prompt Payment Act.
- (c) The Consultant shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by BJCTA when the amount due on such deliveries so warrants; or, when requested by the Consultant, payment for accepted partial deliveries maybe made whenever such payment would equal or exceed either \$1,000 or 50% of the total amount of this contract.
- (d) For each billing cycle, Consultant shall provide detailed individual invoices for each task order with a Summary of Invoices.
 - 1. Summary of Invoices shall include the contract number, summaries of all task orders issued against the contract whether open or closed, invoice number, BJCTA Project Manager name, task order number, project description, task order authorized amount, percent of task order complete, percent of invoicing complete, previous amount billed, current amount due and the task order balance. In the case that a task order is 100% complete, but invoicing is less than 100% complete, an itemization of the outstanding invoices shall be included.
 - 2. Individual Task Order Invoices shall include the contract number, invoice number, task order number, project description, and for each staff position assigned to the task order: title and contracted fully burdened rate. Each title line shall include a breakdown of hours, cost and percent of total for the task order contractual amount, previously billed, current invoice and total. Reimbursables shall be itemized by task order contractual amount, previously billed, current invoice.
 - 3. The final invoice for Task Order services will include a firm-fixed price adjustment line if the total invoiced for services are not equal to the contractual task order total for services. This adjustment could be positive or negative to bring the actual invoice equal to the task order contractual amount. The task orders are negotiated firm-fixed price for services; BJCTA will not pay greater than the firm-fixed price unless a scope change is ordered.
 - 4. Reimbursable expenses will not exceed the reimbursable expenses authorized by the task order and are subject to the terms specified in Section 6 above.
 - 5. Third Parties must submit all invoices to consultant for submission to BJCTA.

22. Discounts

- (a) Prompt payment discounts will not be considered in evaluating offers for award, unless otherwise specified in the solicitation. However, offered discounts will be taken if payment is made within the discount period, even though not considered in the evaluation of offers.
- (b) In connection with any discount offered for prompt payment, time shall be computed from (1) the date of completion of performance of the services or delivery of the supplies to the carrier if acceptance is at a point of origin, or date of delivery at destination or port of embarkation if delivery and acceptance are at either of these points, or (2) the date the correct invoice or

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voucher is received in the office specified by BJCTA, if the latter is later than the date of performance or delivery. For the purpose of computing the discount earned, payment shall be considered to have been made on the date of BJCTA's check.

E-Verify

By entering into this Contract, the Contractor certifies and ensures that it utilize and will continue to utilize, for the term of this contract the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

- (1) All persons employed to perform duties within Alabama unless otherwise agreed by the Agency, during the term if the contract
- (2) All persons (including subcontractors) assigned by the respondent to perform work pursuant to the Contractor, within the United States of America

The Contractor shall provide, upon request of BJCTA, an electronic or hard copy screenshot of the confirmation of tentative non-confirmation screen containing the E-Verify case verification number for the attachment to the Form I-9 for the three most recent hires that match the criteria above, by the contractor, and the contractors' subcontractors, as proof that this provision is being followed.

If this certification is falsely made, the contract may be immediately terminated at the discretion of BJCTA and at no fault to BJCTA, with no prior notification. The contractor shall also be responsible for the costs of any re-solicitation that BJCTA must undertake to replace the terminated contract.

Insurance Requirements

Consultant shall furnish proof of BJCTA stipulated insurance requirements specified below. All insurance policies shall be primary and non-contributing with any other valid and collectible insurance or self-insurance available to BJCTA and shall contain a contract waiver of subrogation in favor of BJCTA. Consultant shall furnish to BJCTA certificate(s) of insurance evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Prior to the expiration of a certificate of insurance, a new certificate of insurance shall be furnished to BJCTA showing continued coverage. Each policy shall be endorsed to provide thirty (30) days written notice of cancellation or non-renewal to BJCTA and BJCTA shall be named as an Additional Insured under each policy, excluding Professional Liability insurance. All insurance policies shall be written by reputable insurance company or companies acceptable to BJCTA with a current Best's Insurance Guide Rating of A+ and Class XIII or better. All insurance companies shall be authorized to transact business in the State of Alabama. Consultant shall notify BJCTA in writing of any material alteration of such policies, including any change in the retro-active date in any "claims-made" policy or substantial reduction of aggregate limits, if such limits apply or cancellation thereof at least thirty (30) days prior thereto. The below requirements only represent the minimum coverage acceptable to BJCTA and these requirements are not intended to represent the maximum risk or the maximum liability of Contractor. Consultant shall be responsible for setting its own insurance requirements, if any, for the kind and amounts of insurance to be carried by its subconsultants in excess of the insurance required by BJCTA.

The Consultant shall carry and pay the premiums for insurance of the types and in the amounts stated below.

BJCTA Minimum Coverage Requirements

Commercial General Liability Insurance Coverage with limits of not less than One Million Dollars and No/100 Dollars (\$1,000,000) Combined Single Limit of Liability for Bodily Injury and Property Damage including Products Liability.

Automobile Liability Insurance with minimum coverage limits of not less than One Million Dollars and No/100 Dollars (\$1,000,000) with combined single limit of liability, covering all owned, hired and non-owned automobiles used in

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connection with work for Bodily Injury and Property Damage.

Workers' Compensation Insurance providing statutory limits in accordance with the Alabama State Law and/or other State or Federal law as may be applicable to the work being performed under this contract. Employer Liability Insurance with minimum limits of One Million Dollars and No/100 Dollars (\$1,000,000).

Professional Liability Insurance covering negligent acts, errors and omissions arising from the Consultant's work to pay damages for which the Consultant may become legally obligated. Minimum limits of liability shall be not less than One Million Dollars and No/100 Dollars (\$1,000,000) on an annual aggregate basis.

The limits of liability as required above may be provided by a single policy of insurance or by a combination of primary, excess or umbrella policies but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required above.

Consultant, and all of its insurers shall, in regard to the above stated insurance, agree to waive all rights of recovery or subrogation against BJCTA, its directors, officers, employees, agents, successors and assigns, and BJCTA's insurance companies arising out of any claims for injury(ies) or damages resulting from the work performed by or on behalf of Consultant under this contract and/or use of any BJCTA premises or equipment under this contract.

Each insurance policy shall contain the following endorsements:

PRIMARY AND NON-CONTRIBUTORY INSURANCE and WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS, which shall be evidenced on the Certificate of Insurance. The General Liability insurance shall include contractual endorsement(s) which acknowledge all indemnification requirements under the Agreement, which shall be evidenced on the Certificate of Insurance. Proof that insurance coverage exists shall be furnished to BJCTA by way of a Certificate of Insurance before any part of the contract work is started.

If any insurance coverage required to be provided by the Contractor is canceled, terminated, or modified so that the required insurance coverages are no longer in full force and effect, BJCTA may terminate this contract or obtain insurance coverages equal to the required coverage, the full cost of which will be the responsibility of the Consultant and shall be deducted from any payment due Consultant.

If any part of the contract is sublet, Consultant shall be liable for its Subconsultant's insurance coverages of the types and in the amounts stated above and shall furnish BJCTA with copies of such Certificates of Insurance. No delay in the work caused by the Consultant's enforcement of its Subcontractor's insurance requirements shall be excusable delay in the contract. In the event a subconsultant is unable to furnish insurance in the limits required under the contract, the Contractor shall endorse the subconsultant as an ADDITIONAL INSURED on Consultant's policies.

All insurance required to be maintained or provided by the Consultant shall be with companies and through policies approved by BJCTA. BJCTA reserves the right to inspect in person, prior to the commencement of the contract work, all of the Consultant's insurance policy required under this contract.

If the Consultant has procured insurance at the time of the Consultant's submission of its bid, proof of the required insurance should be submitted with the Consultant's bid or proposal. Alternatively, the Consultant is requested to submit evidence of a commitment from an insurance company or companies, or a duly licensed agent, that the Consultant has made arrangements for the required insurance. If the bid or proposal is considered for award, and the Consultant has not previously furnished either the proof of insurance or evidence of commitment, the Consultant will be required to provide proof of the insurance or evidence of a commitment within five (5) days of request. If the Consultant is awarded the contract and has submitted evidence of commitment rather than proof of the required insurance, the Consultant must furnish proof of the required insurance within ten (10) days of the award of the contract. Certificate of Insurance must indicate the contract number and description. The

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insurance certificate should be mailed to the attention of the Procurement Official.

The Consultant and its lower tier subconsultants are required to cooperate with BJCTA and report all potential claims (workers' compensation, general liability and automobile liability) pertaining to this contract, to BJCTA's Procurement Department within two (2) days of the incident.

25. Disclosure of Interested Parties

(For contracts that require Board authorization)

As a condition for Contract award, the bidder or offeror selected for award shall submit within 5 days of notification of Board approval a Disclosure of Interested Parties form.

26. Accounting System Certification

(a) Each offeror should include a completed Accounting System Certification Form provided as Attachment 2.

(b) This clause and the certification form, provided as Attachment 3, shall be included in any and all subcontracts to this contract. Subcontractor accounting systems must also be approved by BJCTA prior to the incurrence of any costs allocable to this contract. Certain proposed subcontractors may not be able to meet the accounting system requirements.

27. Certificate of Current Cost or Pricing Data

When cost or pricing data must be certified, a certificate substantially shall be included in the contract file along with any award documentation required under BJCTA Procurement Policy and Guidelines. The offeror or contractor shall be required to submit the certificate as soon as practicable after agreement is reached on the contract price or adjustment.

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY

EXHIBIT B**SPECIAL SOLICITATION INSTRUCTIONS AND CONDITIONS****Attachment 1 to Exhibit B****Certificate of Current Cost or Pricing Data**

When cost or pricing data must be certified, a certificate substantially shall be included in the contract file along with any award documentation required under BJCTA Procurement Policy Manual. The offeror or contractor shall be required to submit the certificate as soon as practicable after agreement is reached on the contract price or adjustment.

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, cost or pricing data as defined in the BJCTA Procurement Policy Manual submitted, either actually or by specific identification, in writing, to the Procurement Official in support of _____, are accurate, complete, and current as of (date) (month) (year) _____.***

This certification includes the cost or pricing data supporting any advance agreement(s) between the offeror and the Authority which are part of the proposal.

Firm _____

Name _____

Title _____

Date of Execution _____ ***

(End of Certificate)

*Describe the proposal, quotation, request for price adjustment or other submission involved, giving appropriate identifying number (e.g., RFP No. _____)

**The effective date shall be a mutually determined date prior to but as close to the date when price negotiations were concluded and the contract price was agreed to as possible. The responsibility of the offeror or contractor is not limited by the personal knowledge of the offeror's or contractor's negotiator if the offeror or contractor had information reasonably available, at the time of agreement, showing that the negotiated price is not based on accurate, complete, and current data.

***This date should be as soon after the date when the price negotiations were concluded and the contract price was agreed to as practical.

(2) Although the certificate pertains to "cost or pricing data," it is not to be construed as a representation as to the accuracy of the offeror's or contractor's judgment on the estimated portion of future costs or projections. It does, however, constitute a representation as to the accuracy of the data upon which the offeror's or contractor's judgment is based. A Certificate of Current Cost or Pricing Data shall not substitute for examination and analysis of the offeror's or contractor's proposal.

(3) Whenever it is anticipated that a Certificate of Current Cost or Pricing Data may be required, notice of this requirement shall be included in the solicitation.

(4) The exercise of an option at the price established in the initial negotiation in which certified cost or pricing were used does not require recertification or further submission of data.

*****TO BE COMPLETED AND SUBMITTED AFTER NEGOTIATIONS*****

EXHIBIT B
SPECIAL SOLICITATION INSTRUCTIONS AND CONDITIONS

Attachment 2 to Exhibit B**Offeror's Accounting System Certification**

Offeror's Name:

Offeror's Address:

Section I - Instructions

The offeror must complete and submit a copy of this form with the solicitation.

Section II – Certification

Based upon my evaluation of the Offeror's accounting system, I, as authorized representative of the Offeror:

(Check one of the following:)

- ☒ **CERTIFY** that the Offeror's accounting system is in accordance with generally accepted accounting principles applicable in the circumstances.

At a minimum, the accounting system provides for:

1. Proper segregation of direct cost from indirect cost;
2. Identification and accumulation of direct costs by contract;
3. A logical and consistent method for the allocation of indirect costs to intermediate and final cost objectives. (A contract is a final cost objective);
4. Accumulation of costs under general ledger control;
5. A timekeeping system that identifies employees by intermediate or final cost objectives;
6. A labor distribution system that charges direct and indirect labor to appropriated cost objectives;
7. Interim (at least monthly) determination of costs charged to a contract through routine posting of books of accounts;
8. Exclusion from costs charged to BJCTA's contracts of amounts, which are not allowable in terms of FAR 31, or other contract provisions;
9. Identification of cost per contract line item if required by the proposed contract;
10. Segregation of pre-contract cost from regular contract cost;
11. Financial information required by contract clauses concerning the limitation of cost or payment, and financial information required to support progress payment; and
12. Records that are maintained in such a manner that adequate reliable data are developed for use in pricing follow-on procurements.

- ☐ **DO NOT CERTIFY** the Offeror's accounting system meets the requirements as set forth above.

Select one of the following:

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY

EXHIBIT B

SPECIAL SOLICITATION INSTRUCTIONS AND CONDITIONS

The accounting system is: __ set up, but not yet operational, __ anticipated, or __ nonexistent.

Typed Name and Title

Signature

Date

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY



REQUEST FOR QUALIFICATIONS

Q-22-10-CG

**CONSTRUCTION MANAGEMENT SERVICES
CONSULTANT**

EXHIBIT C

**BJCTA SOLICITATION INSTRUCTIONS AND
CONDITIONS**

EXHIBIT C

SOLICITATION INSTRUCTIONS AND CONDITIONS

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1. Acknowledgment of Amendments to Request for Proposals

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Offerors shall acknowledge receipt of any amendment to this solicitation: (1) by signing and returning the amendment; or (2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer. The Authority must receive the acknowledgment by the time and at the place specified for receipt of offers.

2. Administrative Remedies

By submission of a bid, proposal, offer, or quotation in response to this solicitation, the bidder or offeror agrees to exhaust its administrative remedies under the Authority's Procurement Policy Manual or the Disputes Clause of any resulting contract prior to seeking judicial relief of any type in connection with any matter related to this solicitation, the award of any contract, and any dispute under any resulting contract.

3. Authority-Furnished Property

No material, labor, or facilities will be furnished by the Authority unless otherwise provided for in the solicitation.

4. Award of Contract

(a) The contract will be awarded to that responsible offeror whose offer, conforming to the solicitation, will be most advantageous to the Authority, price and other factors considered. A responsible offeror is one who affirmatively demonstrates to the Authority that the offeror has adequate financial resources and the requisite capacity, capability, and facilities to perform the contract within the delivery period or period of performance, has a satisfactory record of performance on other comparable projects, has a satisfactory record of integrity and business ethics, and is otherwise qualified and eligible to receive award under the solicitation and laws or regulations applicable to the procurement.

(b) The Authority reserves the right to accept other than the lowest offer, reject any or all offers in part or in total for any reason, to accept any offer if considered best for its interest, and to waive informalities and minor irregularities in offers received.

(c) The Authority may accept any item or group of items of any offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the solicitation, offers may be submitted for any quantities less than those

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY

EXHIBIT C

SOLICITATION INSTRUCTIONS AND CONDITIONS

specified, and the Authority reserves the right to make an award on any item for a unit quantity less than the quantity offered at the unit prices offered unless the offeror specifies otherwise in the offer.

(d) A written award (or acceptance of offer) which is mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the solicitation shall be deemed to result in a binding contract without further action by either party.

(e) The Authority may, within the time specified therein, accept any offer or part thereof, as provided in (c) above, whether or not there are negotiations subsequent to its receipt, unless the offer is withdrawn by written notice received by the Authority prior to award. If subsequent negotiations are conducted, they shall not constitute a rejection or counteroffer on the part of the Authority.

(f) The Authority may award a contract, based on initial offers received, without discussion of such offers. Accordingly, each initial offer should be submitted on the most favorable terms from a price and technical standpoint which the offeror can submit to the Authority.

(g) Any financial data submitted with any offer hereunder or any representation concerning facilities or financing will not form a part of any resulting contract; provided, however, that if the resulting contract contains a clause providing for price reduction for defective cost or pricing data, the contract price will be subject to reduction if cost or pricing data furnished hereunder is incomplete, inaccurate, or not current.

5. Buy America Provision

This solicitation and the resulting contract are subject to the Buy America requirements of 49 U.S.C. § 5323(j) and the Federal Transit Administration's implementing regulations found at 49 CFR § 661, the provisions of each of which are incorporated herein by reference. These regulations require, as a matter of responsiveness, that the bidder or offeror submit with its offer a completed certification in accordance with 49 CFR § 661.6 or § 661.12, as appropriate. These certifications are set forth in Exhibit U of this solicitation.

6. Cancellation of Solicitation

This solicitation may be cancelled by the Authority before or after receipt of bids or proposals (as applicable) in accordance with the provisions of the Procurement Policy Manual.

7. Confidential Data

Each offeror may clearly mark each page of its offer that contains trade secrets or other confidential commercial or financial information, which the offeror believes, should not be disclosed outside the Authority. Disclosure of requested information will be determined in accordance with the Alabama State Law.

8. Disadvantaged Business Enterprise (DBE) Minority Participation

(a) It is the policy of the Authority and the Department of Transportation (DOT) to ensure that Disadvantaged Business Enterprises (DBEs), as defined in Exhibit G of this solicitation and pursuant to 49 Code of Federal Regulations (CFR) Part 26, are provided a level playing field, thus fostering an equal opportunity for them to participate in the performance of contracts financed in whole or in part with Federal funds. Consequently, the DBE requirements of 49 CFR Part 26 applies to this solicitation. In this regard, all offerors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have a level playing field and an opportunity to compete for and perform contracts. The Authority and all offerors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of DOT-assisted contracts or subcontracts.

(b) In accordance with its DBE Policy, the Authority has established a goal for DBE participation in this solicitation. The offeror will be expected to meet or exceed, and/or demonstrate its good faith efforts to meet the goal. This goal, expressed as a percentage of the total contract price, including any increases that may occur, is:

10.5	% DBE Participation
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BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY

EXHIBIT C

SOLICITATION INSTRUCTIONS AND CONDITIONS

Note: N/A denotes not applicable to this procurement.

- (c) The Authority's DBE requirements are set forth in Exhibit G of this solicitation. Offerors are advised to carefully review Exhibit G including the requisite forms attached thereto. Offerors should undertake necessary steps to plan and adequately provide for compliance with the stated DBE utilization goal well in advance of the date specified for the bid opening or receipt of proposals.
- (d) Offerors are advised that the issue of whether or not the offeror has met or exceeded the established goal, or demonstrated sufficient good faith efforts, is considered by the Authority a matter of the offeror's responsibility. BJCTA will only award contracts to offerors determined to be responsible.
- (e) The percentage agreed to between BJCTA and the successful offeror shall be incorporated into the contract resulting from this solicitation.

9. Explanation to Offerors

Any explanation desired by an offeror regarding the meaning or interpretation of the solicitation, drawings, specifications, etc., must be requested in writing from the Authority's Procurement Official and with sufficient time allowed for a reply to reach offerors before the submission of offers. Oral explanations or instructions given before the award of any contract, at any pre-proposal conferences or otherwise, will not be binding on the Authority. Any information given to an offeror concerning an interpretation of the solicitation will be furnished to all offerors as an amendment to the solicitation if such information is necessary to offerors in submitting offers on the solicitation or if the lack of such information would be judicial to uninformed offerors.

10. Federal Transit Administration

As a result of the enactment of the Federal Transit Act Amendments of 1991, the Urban Mass Transportation Administration (UMTA) was redesignated as the Federal Transit Administration (FTA). Accordingly, whenever in the solicitation reference is made to either the "Urban Mass Transportation Administration" or "UMTA", that reference shall be considered as referring to either the "Federal Transit Administration" or "FTA", as appropriate.

11. FTA Protest Procedures

(a) In accordance with the "Administrative Remedies" provision of this solicitation and the detailed procedures set forth in Chapter 10 of the Authority's Procurement Regulations, any interested party who is aggrieved or adversely affected in connection with this solicitation, or award of a contract as a result of this solicitation, may protest to the Vice President of Procurement, and appeal any adverse decision of the Vice President of Procurement to the Authority's Board of Directors or its duly authorized representative.

(b) Paragraph 7(l) of Federal Transit Administration (FTA) Circular 4220.1F prescribes the limited circumstances under which FTA will review a protest and establishes the detailed procedures that must be followed by a protestor. Under those procedures, FTA will only review protests submitted by an "interested party" regarding: (1) the alleged failure of the Authority to have or follow its written protest procedures, or its alleged failure to review a complaint or protest; or (2) violations of Federal law or regulation.

12. Late Submissions, Modifications and Withdrawals of Offers

(a) Any offer received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made, and:

- (1) it was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th or earlier);
- (2) it was sent by mail, and it is determined by the Authority that the late receipt was due solely to mishandling by the Authority after receipt at the Authority's offices;

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY

EXHIBIT C
SOLICITATION INSTRUCTIONS AND CONDITIONS

- (3) it was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 P.M. at the place of mailing two (2) working days prior to the date specified for receipt of offers. The term "working days" excludes weekends and U. S. Federal holidays; or
- (4) it is the only offer received.
- (b) Any modification of an offer, except a modification resulting from the Procurement Official's request for a "best and final" offer, is subject to the same conditions as in (a)(1) and (a)(2) of this provision.
- (c) A modification resulting from the Procurement Official's request for a "best and final" offer received after the time and date specified in the request will not be considered unless received before award, and the late receipt is due solely to mishandling by the Authority after receipt at the Authority's offices.
- (d) The only acceptable evidence to establish:
- (1) the date of mailing of a late offer or modification sent either by registered or certified mail is the U.S. Postal Service postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. If neither postmark shows a legible date, the offer, modification, or withdrawal shall be deemed to have been mailed late. The term "postmark," means a printed, stamped, or otherwise placed impression, exclusive of a postage meter machine impression, which is readily identifiable without further action as having been supplied and affixed on the date of mailing by an employee of the U.S. Postal Service. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye "postmark" on both the receipt and the envelope or wrapper; and
 - (2) the time of receipt at the Authority is the time-date stamp of the Authority on the offer wrapper or other documentary evidence of receipt maintained by the Authority.
 - (3) the date of mailing of a late offer, modification, or withdrawal sent by U. S. Postal Service Express Mail Next Day Service - Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service - Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U. S. Postal Service. "Postmark" has the same meaning as defined in paragraph (d)(1) of this provision. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's-eye "postmark" on both the receipt and the envelope or wrapper.
- (e) Notwithstanding (a), (b), and (c) of this provision, a late modification of an otherwise successful offer which makes its terms more favorable to the Authority will be considered at any time it is received and may be accepted.
- (f) Offers may be withdrawn by a written notice received in accordance with (Modification or Withdrawal of Proposals). An offer may be withdrawn in person by an offeror or his offeror's authorized representative, provided the identity of the person requesting withdrawal is established and the person signs a receipt for the offer prior to award.

13. Multiple or Alternate Offers Not Accepted**(a) Definitions.**

- (1) Multiple offers mean more than one offer submitted, each satisfying the specific stated requirements of the solicitation.
- (2) Alternate offers mean an offer submitted that may depart from the specific stated requirements of the solicitation.

(b) Unless otherwise specified in this solicitation, multiple or alternate offers shall not be accepted in response to this solicitation. All multiple or alternate offers shall be rejected; provided however, that if the offeror clearly identifies a primary offer, it shall be evaluated and considered for award as though it were the only offer submitted.

14. Order of Precedence

EXHIBIT C
SOLICITATION INSTRUCTIONS AND CONDITIONS

In the event of any inconsistency between the provisions of the solicitation (including any resulting contract), the inconsistency shall be resolved by giving precedence in the following order: (a) the Schedule; (b) Special Solicitation Instructions and Conditions; (c) Solicitation Instructions and Conditions; (d) Special Provisions; (e) General Provisions; (f) other provisions of the contract whether incorporated by reference or otherwise; and (g) the specifications or statement of work/scope of services.

15. Preparation of Offers

(a) Offerors are expected to examine the Schedule, solicitation instructions, Special Provisions, General Provisions, all drawings, specifications, the statement of work/scope of services, and all other provisions of, and exhibits to, the solicitation, whether incorporated by reference or otherwise, prior to the submission of offers. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. Offerors shall sign and print or type their name on the form provided by the Authority for submitting an offer and each continuation sheet on which they make an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent of the offeror (other than an officer or a partner of the offeror) are to be accompanied by evidence of the agent's authority (unless such evidence has been previously furnished to the Authority).

(c) Pricing for the property or services offered shall be provided by offerors in the format required by the Authority. Where property is being offered, the prices offered shall include packing unless otherwise specified. In case of any discrepancy between a unit price and any extended or total price, the unit price will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.

(d) Offers for property or services other than those specified in the Schedule will not be considered unless specifically authorized in the solicitation.

(e) The offeror must state a definite time for delivery of property or for performance of services unless otherwise specified in the solicitation. All measurements shall be in the system of weights and measures in common usage in the United States, and pricing shall be in U.S. dollars.

(f) In computing any period of time for the solicitation or any resulting contract, "days" means calendar days, and the day of the event from which the designated period of time begins to run shall not be included, but the last day shall be included unless it is a Saturday, Sunday, or Federal or State of Texas holiday, in which event the period shall run to the end of the next business day.

16. Pre-Proposal Conference and Questions Concerning the Solicitation

(a) A pre-proposal conference is scheduled for all interested parties to discuss the solicitation requirements, if so indicated on the Solicitation, Offer and Award Form. Details concerning the conference date, time and location are also provided.

(b) Questions and requests for clarification relating to this solicitation, shall be submitted in writing, to the contact person identified in the Solicitation, Offer and Award Form by mail, facsimile, or commercial courier, at least three (3) working days in advance of the scheduled conference to allow sufficient time for responses to be considered and prepared by the Authority. Questions concerning the solicitation that are not addressed at the conference, if one is held, shall be submitted in writing no later than five (5) working days in advance of the offer submission due date and time, which is the minimum time required for the Authority's reply to reach offerors before the offer submission due date and time, as required by the "Acknowledgement of Amendments to the Request for Proposals" clause. Questions received less than five (5) working days in advance of the offer submission due date and time will be responded to only if the Authority determines that the question and its response would have a material and substantive impact on the solicitation.

(c) Questions or requests for clarification may be submitted on the form provided as Exhibit O.

17. Procurement Confidentiality

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY

EXHIBIT C**SOLICITATION INSTRUCTIONS AND CONDITIONS**

(a) Offerors are cautioned that until this solicitation is either awarded or cancelled, they may have contact only with the contact person identified in the Solicitation, Offer and Award Form. Discussions or communications regarding this solicitation with any other personnel associated in any capacity with the Authority, its consultants, contractors, or members of its Board of Directors, are strictly prohibited, unless otherwise approved in writing by the Procurement Official.

(b) Any violation of this restriction may result in the disqualification of the offeror from further participation in this procurement, and from award of any contract or subcontract under this solicitation.

18. Submission of Offers

(a) Offers and modifications thereof shall be enclosed in sealed envelopes or sealed cartons and submitted to the Procurement Official of the Birmingham-Jefferson County Transit Authority at the address specified in the solicitation. The offeror shall show the hour and date specified in the solicitation for receipt of offers, the solicitation number, and the offeror's name, address, and telephone number on the face of the envelope or carton.

(b) Samples of items, when required, must be submitted within the time specified and, unless otherwise specified in the solicitation, at no expense to the Authority. If not destroyed by testing, samples will be returned at the offeror's request and expense, unless otherwise specified in the solicitation.

(c) Each copy of the offer shall include the legal name of the offeror and a statement whether the offeror is a sole proprietorship, a corporation, or any other legal entity. An offer for a corporation shall further give the state of incorporation and have the corporate seal affixed to it.

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY



REQUEST FOR QUALIFICATIONS

Q-22-10-CG

**CONSTRUCTION MANAGEMENT SERVICES
CONSULTANT**

EXHIBIT D

SPECIAL PROVISIONS

EXHIBIT D

SPECIAL PROVISIONS

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1. Type of Contract

(a) This is a firm-fixed, indefinite delivery indefinite quantity (IDIQ) price task order type contract with qualified independent firms to provide various professional services as specified in Exhibit H, entitled "Statement of Work" at firm fixed-unit prices for various labor categories, along with a reimbursable provision for Other Non-Salary Expenses, as a direct pass through for payment, without markup for overhead, profit, or indirect expenses.

(b) Any orders issued during the effective period of this contract, but not completed within that period, shall be completed by the Consultant within the time specified in the order. The contract shall govern the Consultant's and Authority's rights and obligations with respect to that order, to the same extent as if the order were completed during the contract's effective period.

2. Term of Contract

- a) The term of this contract shall be two (2) years calendar years with two (2) one-year options from receipt of written notice of award.
- b) This contract will be funded on an annual basis.

3. Option to Extend

(a) The Authority may extend the term of this contract by written notice to the Consultant within the time specified in the contract. If feasible, the Authority shall give the Consultant a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Authority to an extension, and any absence of notice shall not affect the validity of any exercise of the option to extend the term of this contract.

(b) If the Authority exercises this option, the extended contract shall be considered to include this option provision.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed five (5) years.

EXHIBIT D
SPECIAL PROVISIONS

4. Option to Extend Services

The Authority may require continued performance of any services within the limits and at the rates stated in the Schedule. The Procurement Official may exercise the option by written notice to the Consultant within the period specified in the contract.

5. Notice to Proceed

The Consultant shall not proceed with any work required under this contract without a written Notice to Proceed (NTP) for a specific task order from the Authority. The NTP shall state the services that the Consultant is authorized to perform. The period of performance or expenses incurred by the Consultant prior to the Consultant's receipt of the NTP shall be entirely at the Consultant's risk.

6. Organization and Direction of the Work

(a) When this contract is executed, the Consultant shall submit to the Procurement Official within seven (7) calendar days a chart showing the general executive and administrative organization, the personnel to be employed in connection with the services or work under this contract, and their respective duties. The Consultant shall keep the data furnished current by supplementing it as additional information becomes available.

(b) Work performance under this contract shall be under the full-time resident direction of: (1) the Consultant, if the Consultant is an individual; (2) one or more principal partners, if the Consultant is a partnership; or (3) one or more senior officers, if the Consultant is a corporation, association, or similar legal entity. However, if the Procurement Official approves, the Consultant may be represented in the direction of the work by a specific person or persons (approved by the Authority) holding positions other than those identified in this paragraph. Regardless, the Consultant shall designate in writing to the Authority one individual who is assigned overall responsibility for the contract.

(c) The chart required by this clause shall reflect the key personnel as agreed to during negotiations. The Consultant shall not, absent prior written notice to and consent by the Procurement Official remove or reassign any of such key personnel.

7. Availability of Funds (Multi-Term)

Funds are not presently available for performance under this contract beyond the current fiscal year. The Authority's obligation for performance of this contract beyond the current fiscal year is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Authority for any payment may arise for performance under this contract beyond the current fiscal year, until the Consultant receives notice of availability of funds, in writing, from the Procurement Official.

8. Ordering

(a) The services set out in Exhibit H, "Statement of Work" under this contract shall be ordered by issuance of a fixed price written task order. A separate written task order shall be issued for each discrete tasking. All written task orders are subject to the terms and conditions of this contract. In the event of a conflict between a written task order and this contract, the contract shall govern. The Procurement Official and his/her authorized representative are the only individuals with the authority to place task orders against this contract.

(b) The determination of which firm or groups shown below shall submit a proposal for a specific task order is solely within the discretion of the Procurement Official Technical Representative (POTR), who will determine the principal focus of work to be performed.

(c) Time for submittal of the Consultant's proposal for each individual requirement will be determined by the Authority but will normally be within ten (10) calendar days for routine task orders and five (5) calendar days for immediate task orders.

(d) Fixed price task orders will be issued to the most qualified firm proposing a fair and reasonable task order price.

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**EXHIBIT D
SPECIAL PROVISIONS**

(e) It shall be a mutual goal of the contracting parties to finalize negotiations within ten (10) calendar days after proposal submittal to the Authority.

(f) The Consultant shall immediately notify the Authority whenever it has a reason to believe:

- (1) the hourly rate payments and other non-salary expenses that will accrue in performing the task order in the next succeeding 30 days, if added to all other payments and expenses previously accrued, will surpass 85 percent of the not-to-exceed amount of the task order, or
- (2) the total price to complete the work under a written task order will surpass the not-to-exceed amount of the task order.

(g) The Authority shall not be obligated to pay the Consultant any amount in excess of the not-to-exceed price of the task order, and the Consultant shall not be obligated to continue performance if to do so would surpass the not-to-exceed price set forth in the task order, until the Procurement Official has notified the Consultant in writing that the not-to-exceed price has been increased and has specified in the notice the revised not-to-exceed price for performance under this task order. When and to the extent that the not-to-exceed amount set forth in the task order has been increased, any hours expended and other non-salary expenses incurred by the Consultant in excess of the not-to-exceed price before the increase shall be allowable to the same extent as if the hours expended and other non-salary expenses had been incurred after the increase in the not-to-exceed price of the task order.

9. Issuing Task Orders

All work done under this contract shall be by issuance of written task orders.

10. Licenses and Permits

The Consultant shall, without additional expense to the Authority, be responsible for obtaining any necessary licenses, permits, and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to the performance of the work or to the products or services to be provided under this contract including, but not limited to, any laws or regulations requiring the use of licensed Consultants to perform parts of the work.

11. Drawings and Other Data

All designs, drawings, specifications, notes, and other work developed in the performance of this contract shall become the sole property to the Authority and may be used on any other design or construction without additional compensation to the Architect-Engineer. The Authority shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code. With respect thereto, the Architect-Engineer agrees not to assert or authorize others to assert any rights or establish any claim under the design patent or copyright laws. The Architect-Engineer, for a period of three years after completion of the project, agrees to furnish all retained work on the request of the Procurement Official. Unless otherwise provided in this contract and the Architect-Engineer shall have the right to retain copies of all work beyond such period.

12. Invoicing and Payment

(a) Invoices may be submitted once per month to:

Birmingham-Jefferson County Transit Authority
Accounts Payable
P.O. Box 10212
Birmingham, Alabama 35202
Email: accountspayable.org

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and shall conform to policies or regulations adopted from time to time by the Authority. Invoices shall be legible and shall contain, as a minimum, the following information: (1) the contract and order number (if any); (2) a complete itemization of all costs including quantities ordered and delivery order numbers (if any); (3) evidence of the acceptance of the supplies or services by the Authority; (4) unique traceable invoice number(s); and (5) any other information necessary to demonstrate entitlement to payment under the terms of the contract. Failure to provide the above critical information may result in the rejection and return of the invoice for resubmission with complete data.

(b) Subject to the withholding provisions of the contract, payment shall be made within 30 days after the Authority's receipt of a properly prepared invoice.

13. Insurance Requirements

(a) Required Coverage. The Consultant shall, at all times during the term of this contract and extended terms thereof, provide and maintain the following types of insurance protecting the interests of the Authority and the Consultant with limits of liability not less than those specified below.

(1) Comprehensive Automobile Liability insurance or its equivalent, covering all owned, hired, and non-owned vehicles used in connection with the work performed under this contract with combined single limits for bodily injury and property damage liability of not less than \$1,000,000.

(2) Commercial General Liability insurance or its equivalent, providing limits of not less than \$2,000,000 for bodily injury and property damage per occurrence with a general aggregate of \$2,000,000 and products and completed operations aggregate of \$2,000,000. There shall not be any policy exclusions or limitations for the following:

- Contractual Liability covering Consultant's obligations herein
- Personal Injury Advertising Liability
- Medical Payments
- Fire Damage Legal Liability
- Broad Form Property Damage
- Liability for Independent Consultants

(3) Workers' Compensation Insurance, providing benefits comparable to those provided under the Workers' Compensation Act of the State of Texas and/or any other State or Federal law or laws applicable to the Consultant's employees performing work under this contract. Employer's Liability Insurance with limits of liability of not less than \$500,000 each accident, \$500,000 each employee for disease and \$500,000 policy limit for disease. **This insurance must be endorsed with a Waiver of Subrogation Endorsement, waiving the carrier's right of recovery under subrogation or otherwise from BJCTA and any other interests as directed by BJCTA.**

(4) Professional Liability including services with limits of not less than \$1,000,000 to remain in force for the entire period of performance under this contract and any option periods.

(b) Certificates of Insurance. Before commencing execution of this contract, the Consultant shall mail Certificates of Insurance satisfactory to the Authority (or, as and when the Authority may direct, copies of the actual insurance policies) at the following address:

Procurebids@bjcta.org
Birmingham-Jefferson County Transit Authority
P.O. Box 10212
Birmingham, Alabama 35202
Attention: Procurement Department
Contract # C-22-10-CG

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evidencing that insurance as required by paragraph A, and all subparagraphs to (A) above, is in force, stating policy number dates of expiration and limits of liability thereunder. All copies of policies and Certificates of Insurance submitted to the Authority shall be in form and content acceptable to the Authority.

(c) Approval of Forms and Companies. All coverage described in this contract shall be in a form and content satisfactory to the Procurement Official. No party subject to the provisions of this contract shall violate or knowingly permit to be violated any of the provisions of the policies of insurance described herein. All insurance should be provided by insurance companies with a Best's Rating of A- or better.

(d) Additional Insured Endorsement. The policy or policies providing Commercial General Liability, Automobile Liability and as otherwise required above shall be endorsed to name BJCTA and its directors, officers, representatives, agents, and employees as Additional Insureds as respects operations performed by or on behalf of the Consultant in performance of this contract. The policy shall also be endorsed to name other interests as directed by BJCTA.

(e) Notice of Cancellation or Material Changes. Policies and/or Certificates shall **specifically** provide that a thirty (30) day notice of cancellation, non-renewal, or material change be sent to the Authority.

(f) Multiple Policies. The limits of liability as required above may be provided by a single policy of insurance or a combination of primary, excess or umbrella liability policies. But in no event shall the total limit of liability of any one occurrence or accident be less than the amount shown above.

(g) Deductibles. Companies issuing the insurance policies and the Consultant shall have no recourse against the Authority for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of the Consultant.

(h) Subconsultants. If any part of the work is sublet, Consultant shall require any and all subconsultants performing work under this contract to carry workers' compensation insurance, in accordance with paragraph (a) (3) above. The Consultant shall determine any other types of insurance and the limits of liability that Consultant shall deem appropriate and adequate to protect the interests of the Authority. In the event a subconsultant is unable to furnish any insurance required under this Contract, the Consultant shall endorse the subconsultant as an Additional Insured or become an Alternate Employer. The Consultant shall obtain and furnish to the Authority certificates of Insurance evidencing subconsultants' workers' compensation insurance coverage. If a subconsultant's certificate of workers compensation insurance expires during the period of performance, Consultant shall obtain a renewal certificate. All certificates of workers' compensation insurance must be maintained by the Consultant for a period of not less than 1 year. All other insurance certificates for subconsultants shall be furnished to the Authority upon request.

(i) No Release. The carrying of the above-described coverage shall in no way be interpreted as relieving the Consultant of any other responsibility or liability under this agreement or any applicable law, statute, regulation, or order.

14. Standards of Performance

The Consultant shall perform all services required by this contract in accordance with professional standards prevailing in the Consultant's field of work.

15. Warranty of Services

(a) "Acceptance" as used in this clause, means the act of an authorized representative of the Authority by which the Authority assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of the contract. "Correction," as used in this clause, means the elimination of a defect.

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(b) Notwithstanding inspection and acceptance by the Authority or any provision concerning the conclusiveness thereof, the Consultant warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Procurement Official shall give written notice of any defect or nonconformance to the Consultant within 120 days from the date of written acceptance by the Authority for the design and 120 days from the date of written acceptance by the Authority for the design services during construction. This notice shall state either (1) that the Consultant shall correct or reperform any defective or nonconforming services, or (2) that the Authority does not require correction or reperformance.

(c) If the Consultant is required to correct or reperform, it shall be at no cost to the Authority, and any services corrected or reperformed by the Consultant shall be subject to this clause to the same extent as work initially performed. If the Consultant fails or refuses to correct or reperform, the Procurement Official may, by contract or otherwise, correct or replace with similar services and charge to the Consultant the cost occasioned to the Authority thereby, or make an equitable adjustment in the contract price.

(d) If the Authority does not require correction or reperformance, the Procurement Official shall make an equitable adjustment in the contract price.

16. Disadvantaged Business Enterprise Participation Goals

Disadvantaged Business Enterprise (DBE) owned participation goals will be established for each task order. Participation will be reported separately for each task order. If there is a disadvantaged and minority/women owned joint participation goal established, the disadvantaged participation will be reported on one vendor payment form and the minority/women owned participation will be reported on a separate vendor payment form. See Vendor Payment forms in Exhibits G.

17. Examination and Retention of Records

(a) The Procurement Official and his representatives shall have the audit and inspection rights described in the applicable paragraphs (b) and (c), below.

(b) If this or any price adjustment to this contract is a cost reimbursement type, incentive, time and materials, labor hour, or price redeterminable contract or price adjustment, or any combination thereof, the Consultant shall maintain, and the Procurement Official and his representatives shall have the right to examine, all books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. Such right of examination shall include inspection at all reasonable times at the Consultant's facilities, or such parts thereof, as may be engaged in or maintain records in connection with the performance of this contract.

(c) If the Consultant submitted certified cost or pricing data in connection with the pricing of this contract or if the Consultant's cost of performance is relevant to any change or modification to this contract, the Procurement Official and his representatives shall have the right to examine all books, records, documents, and other data of the Consultant related to the negotiation, pricing, or performance of such contract, change, or modification for the purpose of evaluating the costs incurred and the accuracy, completeness, and currency of the cost or pricing data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the costs incurred and the cost or pricing data submitted, along with the computations and projections used therein.

(d) The materials described in (b) and (c) above shall be made available at the office of the Consultant at all reasonable times for inspection, audit, or reproduction until the expiration of three (3) years from the date of final payment under this Contract, except that:

- (1) if this contract is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three (3) years from the date of any final settlement; and

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(2) records which relate to appeals under the Disputes Clause of this contract or litigation, or the settlement of claims arising out of the performance of this contract, shall be made available until such appeals, litigation, or claims have been resolved.

(e) The Consultant shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts exceeding \$10,000 hereunder, altered to reflect the proper identification of the contracting parties and the Procurement Official under the prime contract.

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REQUEST FOR QUALIFICATIONS

Q-22-10-CG

**CONSTRUCTION MANAGEMENT SERVICES
CONSULTANT**

EXHIBIT E

ADDENDUM TO GENERAL PROVISIONS

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ADDENDUM TO GENERAL PROVISIONS

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The Contractor shall perform its obligations and (where relevant) shall require each of its Subcontractors, at every tier, to perform its respective obligations under this Agreement in accordance with the following requirements.

1. Federal Funding, Incorporation of Federal Transit Administration Terms and Federal Changes

- (a) Applicability. The requirements in this Section 1. apply to all federally funded contracts.
- (b) Flow down. The Contractor shall include the requirements in this Section 1 in each federally funded Subcontract, at every tier.
- (c) Requirements. This Agreement includes, in part, certain standard terms and conditions required by the US Department of Transportation ("DOT"), whether or not expressly set forth in the Agreement provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008 (including any changes, revisions or successor circulars) is automatically hereby incorporated by reference. Anything to the contrary herein notwithstanding, all Federal Transit Administration ("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

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perform any act, fail to perform any act, or refuse to comply with any BJCTA requests which would cause BJCTA to be in violation of the FTA terms and conditions.

- (d) This Agreement is subject to a financial assistance agreement between BJCTA and the FTA and all laws, regulations, guidelines, and provisions of the financial assistance agreement apply to this Agreement and are incorporated by reference as if fully set forth herein.
- (e) The Contractor shall at all times comply with all applicable federal laws and regulations, including without limitation FTA regulations, policies, procedures and directives, including those listed directly or by reference in

applicable grant agreements between BJCTA and FTA, as they may be amended or promulgated from time to time during the term of this Agreement (collectively "**Federal Requirements**"). These Federal Requirements may change and the changed Federal Requirements will apply to this Agreement as required unless the federal government determines otherwise. To achieve compliance with changing Federal Requirements, the Contractor shall include notice in each Subcontract, at every tier, that Federal Requirements may change and that the relevant Subcontractor will be required to comply with any such changed Federal Requirements. The Contractor's failure to comply with, or to ensure the relevant Subcontractor's compliance with, the Federal Requirements shall constitute a material breach of this Agreement.

2. No Government Obligation to Third Parties

- (a) Applicability. The requirement in this Section 2 applies to all federally funded contracts.
- (b) Flow down. The Contractor shall include the requirement in this Section 2 in each federally funded Subcontract, at every tier, modified only if necessary to identify the relevant parties.
- (c) Requirement. Notwithstanding any concurrence by the federal government in or approval of the solicitation or award of this Agreement, absent the express written consent by the federal government, the federal government is not a party to this Agreement and shall not be subject to any obligations or liabilities to BJCTA, the Contractor, or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from this Agreement.

3. FTA Protest Procedure

- (a) In accordance with the "Administrative Remedies" provision of this solicitation and the detailed procedures set forth in BJCTA's Procurement Regulations, any interested party who is aggrieved or adversely affected in connection with this solicitation, or award of a contract as a result of this solicitation, may protest to the Director of Procurement, and appeal any adverse decision of the Director of Procurement or its duly authorized representative.
- (b) Paragraph 7(l) of Federal Transit Administration (FTA) Circular 4220.1 and other applicable federal statutory and regulatory requirements, in each case as in effect on the applicable date ("**Federal Requirements**"), prescribes the limited circumstances under which FTA will review a protest and establishes the detailed procedures that must be followed by a protestor. Under those procedures, FTA will only review protests submitted by an "interested party" regarding: (1) the alleged failure of the Authority to have or follow its written protest procedures, or its alleged failure to review a complaint or protest; or (2) violations of Federal law or regulation.
- (c) Copies of Paragraph 7(l) of FTA Circular 4220.1 will be furnished to any offeror without charge upon written request to the Contracting Officer.

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4. Access To Records and Reports

- (a) Applicability. The record keeping and access requirements in this Section 4 apply to all federally funded contracts.
- (b) Flow down. The Contractor shall include the requirements set out in this Section 4 in each federally funded Subcontract, at every tier.
- (c) The Contractor shall provide BJCTA, 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 Agreement for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor shall, pursuant to 49 C.F.R. § 633.17, provide the FTA Administrator or his authorized representatives, including any Project Management Oversight Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)(I), which is receiving federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309, 5311 or 5337.
- (d) The Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (e) The Contractor shall at all times in carrying out the Work comply, and require its Subcontractors to comply, with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Agreement for a period of not less than three (3) years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case the Contractor shall maintain the same until BJCTA, the FTA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

5. Energy Conservation Requirements

- (a) Applicability. The requirement in this Section 5 applies to all federally funded contracts.
- (b) Flow down. The Contractor shall include the requirement in this Section 5 in each federally funded Subcontract, at every tier.
- (c) Requirement. The Contractor shall 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 42 U.S.C § 6201, et seq. The Contractor shall perform an energy assessment for any building constructed, reconstructed or modified with federal assistance as required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, subpart C.

6. Civil Rights Requirements

- (a) Applicability. The requirements in this Section 6 apply to all federally funded contracts.
- (b) Flow down. The Contractor shall include the requirements in this Section 6 in each federally funded Subcontract, at every tier, modified only if necessary to identify the relevant parties.
- (c) Requirements.

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- (i) Non-discrimination. 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 shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor shall comply with applicable federal implementing regulations and other implementing requirements FTA may issue.
- (ii) Equal Employment Opportunity.
 - (A) Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, and federal transit laws at 49 U.S.C. § 5332, the Contractor shall 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), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect activities undertaken in the course of the Agreement. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor shall 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 shall refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor shall comply with any implementing requirements FTA may issue.
 - (C) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor shall 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 shall comply with any implementing requirements FTA may issue.

7. Program Fraud and False Or Fraudulent Statements Or Related Acts

- (a) Applicability. The requirements in this Section 7 apply to all federally funded contracts.
- (b) Flow down. The Contractor shall include the requirements in this Section 7 in each federally funded Subcontract, at every tier, modified only if necessary to identify the relevant parties.
- (c) Requirements. 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, shall apply to all actions pertaining to this Agreement. Upon execution of this Agreement, the Contractor certifies and affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining this Agreement or the FTA assisted project for which this Agreement work is being performed. In addition to

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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.

- (d) The Contractor also acknowledges that this Agreement is connected with a project that is financed in whole or in part with federal assistance, and if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government, the government reserves the right to impose the penalties of 18 U.S.C. §1001 on the Contractor, to the extent the federal government deems appropriate.

8. Suspension And Debarment

- (a) Applicability. The requirements in this Section 8 apply to federally funded contracts and Subcontracts, at every tier, expected to equal or exceed \$25,000 as well as any contract or Subcontract, at any tier, for federally required auditing services.
- (b) Flow down. The Contractor shall include the requirement to comply with 2 CFR Part 1200 and 2 CFR Part 180 in each federally funded Subcontract (as described in this Section 8), at every tier, that is equal to or exceeding \$25,000 and that is a "covered transaction" for purposes of 2 CFR Part 1200 and 2 CFR Part 180.
- (c) Requirements. This Agreement is a "covered transaction" for purposes of 2 CFR Part 1200 and 2 CFR Part 180. As such, the Contractor shall verify that neither the Contractor, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified, as described in 2 CFR 180.940 and 2 CFR 180.935, respectively.
- (d) The Contractor shall comply, and shall ensure that relevant Subcontractors comply, with 2 CFR Part 1200 and 2 CFR Part 180.
- (e) By entering into this Agreement, the Contractor certifies that it shall comply with the requirements of 2 CFR Part 1200 and 2 CFR Part 180 throughout the period of this Agreement.
- (f) This certification is a material representation of fact relied upon by BJCTA. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to BJCTA, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

9. Recycled Products

- (a) Applicability. The requirement in this Section 9 applies to all federally funded contracts for items designated by the Environmental Protection Agency ("EPA") when procuring \$10,000 or more of one of these items per year.
- (b) Flow down. The Contractor shall include the requirement in this Section 9 in each federally funded Subcontract, at every tier, where the value of an EPA designated item exceeds \$10,000.
- (c) Requirement. The Contractor agrees to provide preference for those products and services that conserve natural resources, protect the environment and are energy efficient in compliance with all the requirements of Section 6002 of the Resource Conservation and Recovery Act as amended (42 U.S.C. § 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

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10. Clean Water and Clean Air Requirements

- (a) Applicability. The requirements in this Section 10 apply to federally funded contracts and Subcontracts, at every tier, exceeding \$150,000.
- (b) Flow down. The Contractor shall include these requirements in this Section 10 in each federally funded Subcontract, at every tier, exceeding \$150,000.
- (c) Clean Water Requirements. The Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor shall report each violation to BJCTA. BJCTA will, in turn, report each violation as required to FTA and the appropriate EPA regional office.
- (d) Clean Air Requirements. The Contractor shall 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 shall report each violation to BJCTA. BJCTA will, in turn, report each violation as required to FTA, the appropriate EPA regional office.

11. Lobbying

- (a) Applicability. The requirement in this Section 11 applies to federally funded contracts and Subcontracts, at every tier, exceeding \$100,000.
- (b) Flow down. The Contractor shall include the requirement in this Section 11 in each federally funded Subcontract, at every tier, exceeding \$100,000.
- (c) Requirement. The Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, requires that contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier of subcontractors shall certify to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded from tier to tier up to BJCTA.

12. Davis-Bacon and Copeland Anti-Kickbacks Acts

- (a) Applicability. The Davis-Bacon and Copeland Acts (40 USC 3141, et seq. and 18 USC 874, the "Acts") apply to grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i) (5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (see 29 FR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.
- (b) Flow down. The Contractor shall include the requirement in this Section 12 in each federally funded Subcontract, at every tier, to which the requirements apply as described in (a) immediately above.
- (c) Requirements:

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Minimum wages.

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

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

- (ii) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination, and which is to be employed under this Agreement shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (A) except with respect to helpers as defined as 29 C.F.R. § 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination;
 - (B) the classification is utilized in the area by the construction industry;
 - (C) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 - (D) with respect to helpers as defined in 29 C.F.R. § 5.2(n)(4), such a classification prevails in the area in which the work is performed.
- (iii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty

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(30) days of receipt and so advise the contracting officer or will notify the contracting officer within the thirty (30) day period that additional time is necessary.

- (iv) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the thirty (30) day period that additional time is necessary.
- (v) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(iii) or (a)(iv) of this Section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (vi) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (vii) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account asset for the meeting of obligations under the plan or program.
- (viii) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination, and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
 - (A) the work to be performed by the classification requested is not performed by a classification in the wage determination.
 - (B) the classification is utilized in the area by the construction industry; and
 - (C) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (ix) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the thirty (30) day period that additional time is necessary.

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- (x) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the thirty (30) day period that additional time is necessary.
- (xi) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(viii) (a)(ix)) or (a)(x) of this Section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (d) Withholding. BJCTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Agreement or any other federal contract with the Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any Subcontractor the full amount of wages required by this Agreement. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by this Agreement, BJCTA may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
- (e) Payrolls and basic records.
 - (i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the Work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. If the Contractor is employing apprentices or trainees under approved programs, it shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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- (ii) The Contractor shall submit weekly for each week in which any Work is performed a copy of all payrolls to BJCTA for transmission to the FTA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. Part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The Contractor is responsible for the submission of copies of payrolls by all Subcontractors.
- (iii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under this Agreement and shall certify the following:
 - (A) that the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. Part 5 and that such information is correct and complete.
 - (B) that each labourer or mechanic (including each helper, apprentice, and trainee) employed under this Agreement during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. Part 3;
 - (C) that each labourer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into this Agreement.
- (iv) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (c)(iii) of this Section.
- (v) The falsification of any of the above certifications may subject the Contractor or Subcontractor and/or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (vi) The Contractor or Subcontractor shall make the records required under paragraph (c)(i) of this Section available for inspection, copying, or transcription by authorized representatives of the FTA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor and/or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. § 5.12.
- (f) Apprentices and trainees.
 - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first ninety (90) days of probationary

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

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

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- (iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. Part 30.
- (g) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 C.F.R. Part 3, which are incorporated by reference in this Agreement.
- (h) Subcontracts. The Contractor or Subcontractor and/or subcontractor shall include, or require to be included, in each Contract and subcontract, at every tier, the clauses contained in 29 C.F.R. § 5.5(a)(1) through (10) and such other clauses as the FTA may by appropriate instructions require. The Contractor shall be responsible for the compliance by any Subcontractor and/or subcontractor with all the contract clauses in 29 C.F.R. § 5.5.
- (i) Contract termination: debarment. A breach of the contract clauses in 29 C.F.R. § 5.5 may be grounds for termination of this Agreement, and for debarment as a contractor and a subcontractor as provided in 29 C.F.R. § 5.12.
- (j) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. Parts 1, 3, and 5 are herein incorporated by reference in this Agreement.
- (k) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Agreement shall not be subject to the general disputes section of this Agreement. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. Parts 5, 6, and 7. Disputes within the meaning of this Section include disputes between the Contractor (or any Subcontractor) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- (l) Certification of eligibility.
 - (i) By entering into this Agreement, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).
 - (ii) No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).
 - (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

13. Buy America Requirements

- (a) Applicability. The requirements in this Section 13 apply to federally funded Construction Contracts and Acquisition of Goods or Rolling Stock Contracts (valued at more than \$150,000).
- (a) Flow down. The Contractor shall include the requirements in this Section 13 in each federally funded Subcontract, at every tier, that exceeds \$150,000 and is a Construction Contract or a contract for Acquisition of Goods or Rolling Stock.
- (b) Requirements. The Contractor shall comply with 49 U.S.C. 5323(j) as amended by MAP-21, 49 U.S.C. 5323(h), 49 CFR Part 661, and FAST Act (Pub. L. 114-94) which provide that federal fund may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7 and was amended by Section 3011 of the FAST Act (Pub. L. 114-94).

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- (c) Separate requirements for rolling stock are set out 49 U.S.C. 5323(j)(2), 49 C.F.R. § 661.11 and FAST Act Section 3011. Rolling stock not subject to a general waiver must be assembled in the United States and have a domestic content percentage of the cost of all components of the rolling stock of more than sixty percent (60%) for fiscal years 2016 and 2017; or more than sixty-five percent (65%) for fiscal years 2018 and 2019; and more than seventy percent (70%) for fiscal year 2020 and each subsequent fiscal year.
- (d) A bidder or offeror must submit to the BJCTA the Buy America certification with all bids or offers, except those subject to a general waiver.
- (e) BJCTA may investigate the Contractor's, any Subcontractor's, and any Supplier's compliance with this requirement. If an investigation is initiated, the Contractor, Subcontractor or Supplier shall document its compliance, in accordance with 49 CFR 661.15, and cooperate with the investigation.

14. Fly America

- (a) Applicability. The requirement in this Section 14 applies to federally funded contracts, at every tier, that may involve the international transportation of goods, equipment or personnel by air.
- (b) Flow down. The Contractor shall include the requirement in this Section 14 in each federally funded Subcontract, at every tier, that may involve international air transportation.
- (c) Requirement. The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Parts 301-10, which provide that recipients and subrecipients of federal funds and their contractors are required to use U.S. flag air carriers as defined in the Fly America Act for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements.

15. Cargo Preference

- (a) Applicability. The requirements in this Section 15 apply to federally funded contracts involving equipment, materials or commodities which may be transported by ocean vessels.
- (b) Flow down. The Contractor shall include the requirements in this Section 15 in each federally funded Subcontract, at every tier, that may be involved with the transport of equipment, materials or commodities by ocean vessels.
- (c) Requirements. Use of United States Flag Vessels – The Contractor shall, in compliance with 46 CFR 381.7, use privately owned United States-Flag commercial vessels to ship at least 50 percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Agreement to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.
- (d) The Contractor shall furnish within twenty (20) working days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National

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Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to BJCTA (through the Contractor in the case of a Subcontractor's bill-of-lading.)

16. Contract Work Hours and Safety Standards Act

- (a) Applicability. The requirements in this Section 16 apply to federally funded construction contracts over \$100,000 (including ferry vessels), rolling stock purchases over \$100,000 and to operations/management contracts over \$100,000 (except transportation services) that involve the employment of mechanics or laborers.
- (b) Flow down. The Contractor shall include the requirements in this Section 16 in each federally funded Subcontract, at every tier, in excess of \$100,000 that involves the employment of mechanics or laborers.
- (c) Requirements. The Contractor shall comply, and shall ensure relevant Subcontractors comply, with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701 et seq), as supplemented by the DOL regulations at 29 C.F.R. Part 5, including the following:
 - (i) Overtime requirements. Neither the Contractor nor any Subcontractor contracting for any part of the Work that requires or involves the employment of laborers or mechanics shall require or permit any such labourer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such labourer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
 - (ii) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the requirements in this Section 16, the Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, the Contractor and the Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual labourer or mechanic, including watchmen and guards, employed in violation of the requirements in this Section 16, in the sum of ten dollars (\$10) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by this Section 16.
 - (iii) Withholding for unpaid wages and liquidated damages. BJCTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or a Subcontractor under the Agreement or any other federal contract with the Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the Contractor, such sums as may be determined to be necessary to satisfy any liabilities of the Contractor or a Subcontractor for unpaid wages and liquidated damages as provided in this Section 16.
 - (iv) Subcontracts. The Contractor shall be responsible for compliance by any Subcontractor with the requirements in this Section 16.
 - (v) Payrolls and basic records. The records to be maintained in accordance with this Section 16 shall be made available by the Contractor or Subcontractors for inspection, copying, or transcription by BJCTA and U.S. Dept. of Labor. The Contractor and Subcontractors shall maintain payrolls and basic records during the course of the Work and shall preserve them for a period of three (3) years from the completion of the Agreement for all laborers and mechanics, including guards and watchmen, working on the Agreement. Such records shall contain the name and address of each such employee, social

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security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid.

17. Seismic Safety Requirements

- (a) Applicability. The requirement in this Section 17 applies to federally funded contracts for the design or construction of new buildings or additions to existing buildings.
- (b) Flow down. The Contractor shall include the requirements in this Section 17 in each federally funded Subcontract, at every tier, that involves the design of new buildings or additions to existing buildings or the construction of new buildings or additions to existing buildings.
- (c) Requirement. The Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards for seismic safety required in DOT Seismic Safety Regulations 49 CFR Part 41 and the Contractor shall certify to compliance to the extent required by the regulation. The Contractor shall ensure that all Work performed under this Agreement, including work performed by a Subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

18. ADA Access

- (a) Requirements. The Contractor shall comply with 49 U.S.C. § 5301(d), stating federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies.
- (b) The Contractor shall comply with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, and any subsequent amendments to these laws.
- (c) The Contractor shall at all times in carrying out the Work comply, and require the Subcontractors to comply, with all applicable requirements of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps.
- (d) In addition, the Contractor shall at all times in carrying out the Work comply, and require the Subcontractors to comply, with all applicable implementing federal regulations and directives and any subsequent amendments thereto.

19. Disadvantaged Business Enterprises (DBE)

- (a) Applicability. The requirements in this Section 19 apply to all federally funded contracts.
- (b) Flow down. The Contractor shall include the requirements in this Section 19 in each federally funded Subcontract, at every tier.
- (c) DBE Assurances. The Contractor and its Subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial

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Assistance Programs" in the award and administration of DOT-assisted agreements. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in termination of this Agreement or such other remedy as BJCTA deems appropriate.

- (d) Prompt Payment (49 CFR 26.29). The Contractor shall pay all Subcontractors (DBEs and non-DBEs) with whom the Contractor has entered into a Subcontract for all Work that the Subcontractor has satisfactorily completed, no later than ten (10) days after the Contractor receives payment from BJCTA in respect of such completed Work.

- (e) DBE Goals.

When evaluating if the Contractor has met the overall goal for the contract, BJCTA will evaluate the size, amount and scope of the Subcontracts, the Contractor's efforts to exceed the DBE goal on larger Subcontracts with subcontracting opportunities, approved good faith efforts for subcontracts, and other factors.

In addition to any other sanctions, the wilful failure of the Contractor, DBE or other sub consultant to comply with this Agreement or with the federal DBE regulations may result in disqualification from further contracting, subcontracting, or other participation in BJCTA's projects.

In addition to any other remedies or actions, BJCTA will bring to the attention of the DOT any appearance of false, fraudulent, or dishonest conduct in connection with the DBE program, so that DOT can take steps such as referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General for possible initiation of suspension and debarment proceedings against the offending parties or application of "Program Fraud and Civil Penalties" rules provided in 49 C.F.R. Part 31. The Contractor shall adhere to the following requirements:

- (i) Take affirmative steps to use as many of the race-neutral means of achieving DBE participation identified at 49 C.F.R. § 26.51(b) as practicable to afford opportunities to DBEs to participate in the Agreement. A race-neutral measure is one that is, or can be, used to assist all small businesses; and
- (ii) A DBE firm must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.

Reporting. The Contractor shall report its DBE participation obtained through race-neutral means throughout the period of performance. The Contractor shall submit with each invoice or request for payment a "Monthly Subcontractor Payment Report" reflecting payment made by the Contractor to DBE Subcontractors. Payments to the Contractor will not be processed if the relevant report is not properly completed and attached.

Records. On request, the Contractor shall make available for inspection, and assure that the Subcontractors make available for inspection:

- (iii) records of prompt payments to Subcontractors made in accordance with this Section 19;
- (iv) the names and addresses of DBE subcontractors, vendors, and suppliers under this Agreement.
- (v) the dollar amount and nature of work of each DBE subcontractor.
- (vi) the social/economic disadvantaged category of the DBE firms, i.e., Black American, Hispanic American, Native American, Subcontinent Asian American, Asian Pacific American, Non-Minority Women, or Other; and

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- (vii) other related materials and information.

The Contractor shall promptly notify BJCTA, whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work. The Contractor shall also promptly notify BJCTA of a DBE subcontractor's inability or unwillingness to perform and provide reasonable documentation.

- (f) Transit Vehicle Manufacturer (TVM) Certifications. The Contractor must submit to BJCTA a certification from each transit vehicle manufacturer that desires to bid or propose upon a DOT-assisted transit vehicle procurement that it has complied with the requirements of 49 CFR §26.49. BJCTA may, however, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the overall goal-setting procedures.

20. Veterans Employment

- (a) Applicability. The requirements in this Section 20 apply to all federally funded contracts for capital projects.
- (b) Flow down. The Contractor shall include the requirements in this Section 20 in each federally funded Subcontract, at every tier, involving work on a capital project.
- (c) Requirement. As provided by 49 U.S.C. § 5325(k), the Contractor shall, and shall ensure that its Subcontractors, give a hiring preference, to the extent practicable, to veterans (as defined in United States Code section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under this Agreement. This Section 20 shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee. The Contractor shall ensure that its hiring practices reflect the requirements of this Section 20 and shall, upon request, provide personnel data that reflects compliance with the terms of this Section 20.

21. Privacy Act

- (a) Applicability. The requirements of this Section 21 apply to federally funded contracts to administer any system of records on behalf of the federal government.
- (b) Flow down. The Contractor shall include the requirement in this Section 21 in each federally funded Subcontract, at every tier, to administer any system of records on behalf of the federal government.
- (c) Requirement. The Contractor shall at all times in carrying out the Work comply, and require its Subcontractors to comply, with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 522a. Among other things, the Contractor agrees to obtain the express consent of the federal government before the Contractor or its employees (or a subcontractor at any tier or its employees) operate a system of records on behalf of the federal government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement.

22. National Intelligent Transportation Systems (ITS) Architecture and Standards

Intelligent transportation system ("ITS") property and services must comply with the National ITS Architecture and Standards to the extent required by 23 U.S.C. Section 517(d) and FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455 et seq., January 8, 2001, and later published policies or implementing directives FTA may

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issue. Consequently, third party contracts involving ITS are likely to require provisions to ensure compliance with federal requirements.

23. Alcohol And Drug-Free Workplace Program

- (a) Applicability. The requirements of this Section 23 apply to federally funded contracts for transit operations.
- (b) Flow down. The Contractor shall include the requirements in this Section 23 in each federally funded Subcontract, at every tier, that involves anyone performing a safety-sensitive function for the Contractor, with certain exceptions for contracts involving maintenance services. Maintenance consultants for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance sub-consultants.
- (c) Requirements.
 - (i) FTA Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations Regulations. The Contractor and the Subcontractors shall comply with the FTA anti-drug and alcohol misuse regulations (49 CFR Part 655) and the DOT 'Procedures for Transportation Workplace Drug and Alcohol Testing Programs' (49 CFR Part 40) to the full extent that they are, by their terms, applicable to the Contractor and its Subcontractors. The regulations apply to all "contractors" that have "covered employees" that perform "safety sensitive functions" as those terms are defined in the regulations.
 - (ii) Certificate of Compliance. The 'Certificate of Compliance with 49 CFR Parts 655, Prevention of Alcohol Misuse and Prohibited Drug Use in Transit', submitted by the Contractor prior to award, is incorporated as part of this Agreement.
 - (iii) Drug and Alcohol Testing Program. In the event that any part of the Work under this Agreement falls within the scope of 49 CFR Part 655, the Contractor, and its Subcontractors (as applicable), shall implement all programs required under Part 655, including without limitation, a Drug and Alcohol Testing Program and an anti-drug use and alcohol misuse program, in full compliance with the regulations.
 - (iv) Alcohol and Drug Free Workplace Program. In addition to the above, for Work performed on BJCTA property, the Contractor shall provide an Alcohol and Drug-free Workplace Program in accordance with FTA requirements found at <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/Default.aspx>.

24. Bus Testing

- (a) Applicability. The requirements of this Section 24 apply to federally funded contracts for the manufacture of buses.
- (b) Flow down. The Contractor shall include the requirements of this Section 24 in any federally funded Subcontract for the manufacture of buses.
- (c) Requirements. The Contractor agrees to comply with 49 USC 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:
 - (i) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement

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process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.

- (ii) A manufacturer who releases a report under paragraph (i) above shall provide notice to the operator of the testing facility that the report is available to the public.
- (iii) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- (iv) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988 and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.
- (d) The Contractor understands that misrepresenting the testing status of a vehicle acquired with federal financial assistance may subject the Contractor to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the Contractor understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

25. Pre-Award and Post-Delivery Audit Requirements

- (a) Applicability. The requirements of this Section 25 apply to federally funded contracts for the acquisition of rolling stock used in revenue service.
- (b) Flow down. The Contractor shall include the requirements of this Section 25 in any federally funded Subcontract for acquisition of rolling stock used in revenue service.
- (c) Requirements. The Contractor shall comply with 49 USC § 5323(I) and FTA's implementing regulation at 49 CFR Part 663 (Pre-Award and Post-Delivery Audits of Rolling Stock Purchases) and shall submit the following certifications:
 - (i) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists (A) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (B) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
 - (ii) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.
 - (iii) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit (A) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS; or (B) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.
- (d) A Buy America certification under this Section 25 shall be issued in addition to any certification which may be required by Part 661 of CFR Title 49. Nothing in this section precludes FTA from conducting a Buy America

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investigation under Part 661 of CFR Title 49 "Pre-Award and Post-Delivery Audit Requirements". The Contractor agrees to comply with "Buy America Requirements--Surface Transportation Assistance Act of 1982, as amended," 49 C.F.R. 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. A 5323(j).

26. Transit Employee Protective Agreements

- (a) Applicability. The requirements of this Section 26 apply to each federally funded contract which the FTA has determined involves transit operations. Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute "transit operations" for the purposes of this clause.
- (b) Flow down. The Contractor shall include the requirements of this Section 26 in any federally funded Subcontract, at every tier, involving federally funded transit operations.
- (c) Requirements.
 - (i) General Transit Employee Protective Requirements. To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to BJCTA's project from which federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (i), however, do not apply to any contract financed with federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (ii) and (iii) below.
 - (ii) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities. If the contract involves transit operations financed in whole or in part with federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub-recipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Work in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth in the Grant Agreement or Cooperative Agreement with [BJCTA]. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
 - (iii) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-urbanized Areas. If the contract involves transit operations financed in whole or in part with federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of

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Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.]

27. Metric Requirements

- (a) As required under the Federal Requirements, unless otherwise expressly provided in this Contract or in a Notice by BJCTA's Authorized Representative (including where BJCTA's Authorized Representative authorizes use of the imperial system where use of the metric system is impractical):
 - (i) the metric system shall be the primary unit of measure used on the Project; and
 - (ii) all Notices, information, communications, documentation and submittals related to the Work that contains any unit of measure, must utilize and express all measurements in the metric system provided that the use of the imperial system to express a unit of measure is also permitted if it expresses the metric equivalent of the imperial system unit of measure being used, and is provided as additional/secondary data to the metric system unit of measure.
- (b) The Contractor shall ensure that its Subcontractors comply with the provisions of this Section 27.

28. Safe Operation of Motor Vehicles

- (a) Applicability. The requirement in this Section 28 applies to all federally funded contracts.
- (b) Flow down. The Contractor shall include the requirements set out in this Section 28 in each federally funded Subcontract, at every tier.
- (c) Requirements.
 - (i) Seat Belt Use. In compliance with Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), BJCTA adopts and promotes on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The Contractor is encouraged to adopt and promote similar on-the-job seat belt use policies and programs policies.
 - (ii) Distracted Driving, Including Text Messaging While Driving. In compliance with Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225), U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, and the U.S. DOT Special Provision pertaining to Distracted Driving set out in Section 34(b)(3)(i)-(ii) of the Master Agreement (which are hereby incorporated by reference), BJCTA adopts and enforces workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle BJCTA owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Project, or when performing any work for or on behalf of the Project. The Contractor is encouraged to adopt and enforce similar workplace safety policies and to conduct workplace safety initiatives in a manner commensurate with the Contractor's size, such as: (A) establishing new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and (B) education, awareness, and other outreach to employees about the safety risks associated with text messaging while driving.

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29. Charter Bus Service Requirements

- (a) Applicability. The requirements of this section apply to recipients of federal financial assistance under the Federal Transit Laws, except as otherwise provided in paragraphs (b) through (g) of 49 C.F.R. § 604.2. "Federal Transit Laws" means 49 U.S.C. 5301 et seq., and includes 23 U.S.C. 103(e)(4), 142(a), and 142(c), when used to provide assistance to public transit agencies for purchasing buses and vans (49 C.F.R. § 604.3(a)).
- (b) Flow down. The Contractor shall include the requirements set out in this section in each federally funded Subcontract, at every tier, involving federally funded purchases or operations of buses.
- (c) Requirements. The Contractor shall comply with 49 U.S.C. 5323(d) and 49 C.F.R. Part 604, which provide that recipients and sub-recipients are prohibited from providing charter bus transportation service outside the urban area in which they provide regularly scheduled public transportation service, except where one of the exceptions in 49 C.F.R. § 604.6 through § 604.11 applies.

30. School Bus Requirements

- (a) Applicability. The requirements of this section apply to all recipients of financial assistance for the construction or operation of facilities and equipment for use in providing mass transportation under: (a) The Federal Mass Transit Act of 1964, as amended (49 U.S.C. 1601 et seq.); (b) 23 U.S.C. 142(a) and (c); and 23 U.S.C. 103(e)(4).
- (b) Flow down. The Contractor shall include the requirements set out in this section in each federally funded Subcontract, at every tier, involving public transportation operations.
- (c) Requirements. The Contractor shall comply with 49 U.S.C. 5323(f) and 49 C.F.R. Part 605, which provide that recipients and sub-recipients may use federal assistance for a capital project, or to operate public transportation equipment or a public transportation facility; however, such recipients and sub-recipients are prohibited from providing school bus transportation that exclusively transports students and school personnel in competition with a private school bus operator, except where one of the exemptions in 49 C.F.R. § 605.11 applies.

31. Federal Patent Rights

- (a) Applicability. The requirements of this section apply to federal awards meeting the definition of "funding agreement" under 37 C.F.R. § 401.2(a), where the recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that funding agreement.
- (b) Flow down. The Contractor shall include the requirements set out in this section in each federally funded Subcontract, at every tier, involving performance of experimental, developmental, or research work.
- (c) Requirements. The Contractor shall comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," (implementing the Bayh-Dole Act, 35 U.S.C. Sections 200 et seq.) and any implementing regulations issued by the awarding agency, which are hereby incorporated by reference, and the Contractor and each applicable subrecipient shall take the necessary actions to provide, through the FTA, the federal government the rights required by such regulations, unless the federal government expressly requires otherwise.

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32. Definitions

"**Agreement**" means this agreement (including all its exhibits), as amended from time to time.

"**Contractor**" means [*counterparty name to be inserted*].

"**Person**" means any individual, firm, corporation, company, LLC, LLP, joint venture, voluntary association, partnership, trust or public or private organization, other legal entity, or combination thereof.

"**Project**" means [*project description to be inserted*], as more fully described in this Agreement.

"**Subcontract**" means any contract, subcontract or other form of agreement to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, or any such agreement, supplement or amendment at a lower tier, between a Subcontractor and its lower tier Subcontractor or a Supplier and its lower tier Supplier, at all tiers.

"**Subcontractor**" means any Person with whom the Contractor has entered into any Subcontract to perform any part of the Work or provide any materials, equipment or supplies for the Project, on behalf of the Contractor, and any other Person with whom any Subcontractor has further subcontracted any part of the Work or supply, at all tiers.

"**Supplier**" means any Person not performing work at or on a project site that supplies machinery, equipment, materials, hardware, software, systems or any other appurtenance to the Project to the Contractor or to any Subcontractor in connection with the performance of the Work. Persons who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or Persons to or from a project site will not be deemed to be performing Work at such project site.

"**Work**" means the design, construction, [operation, maintenance,] and all other work, services and obligations required to be furnished, performed or provided by the Contractor under this Agreement.

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REQUEST FOR QUALIFICATIONS

Q-22-10-CG

**CONSTRUCTION MANAGEMENT SERVICES
CONSULTANT**

EXHIBIT F

GENERAL PROVISIONS

BIRMINGHAM JEFFERSON COUNTY TRANSIT AUTHORITY

EXHIBIT F GENERAL PROVISIONS

(ARCHITECT/ENGINEER SERVICES – FIRM FIXED PRICE)

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**EXHIBIT F
GENERAL PROVISIONS****(ARCHITECT/ENGINEER SERVICES – FIRM FIXED PRICE)****1. Definitions**

As used throughout this contract, the following terms shall have the meaning set forth below:

(a) The term "the Authority" means the Birmingham Jefferson County Transit Authority; and the term "duly authorized representative" means any person or persons, or board (other than the Contracting Officer) authorized in writing to act for the Authority.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Authority or his duly appointed successor; and the term includes, except as otherwise provided in this contract, the authorized representative of the Contracting Officer acting within the limits of his authority.

(c) Except as otherwise provided in this contract, the term "subcontracts" includes purchase orders under this contract.

(d) In computing any period of time established under this contract, "days" means calendar days, and the day of the event from which the designated period of time begins to run shall not be included, but the last day shall be included unless it is a Saturday, Sunday, or Federal or State of Alabama holiday, in which event the period shall run to the end of the next business day.

(e) As used herein the terms "contractor" and "architect engineer" are used interchangeably.

2. Assignment

The Contractor shall not assign the whole or any part of this contract or any monies due or to become due hereunder without the prior written consent of the Contracting Officer.

3. Authority Designated Holidays

The Authority designated holidays are: New Year's Day (January 1); Martin Luther King, Jr., Day (third Monday in January); Presidents' Day (third Monday in February); Memorial Day (last Monday in May); Independence Day (July 4); Labor Day (first Monday in September); Thanksgiving Day (fourth Thursday in November); the day after Thanksgiving (fourth Friday in November); and Christmas Day (December 25). Holidays that fall on a Saturday are observed on the Friday before the holiday. Holidays that fall on a Sunday are observed the following Monday.

4. Changes

(a) The Contracting Officer may, at any time, by written order, make changes within the general scope of the contract in the services to be performed. If such changes cause an increase or decrease in the Architect-Engineer's cost of, or time required for, performance of any services under this contract, whether or not changed by any order, an equitable adjustment shall be made, and the contract shall be modified in writing accordingly. Any claim of the Architect-Engineer for adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the Architect-Engineer of the notification of change unless the Contracting Officer grants a further period of time before the date of final payment under the contract.

(b) No services for which an additional cost or fee will be charged by the Architect-Engineer shall be furnished without the prior written authorization of the Contracting Officer.

5. Compliance with the Law

The Contractor shall perform all work hereunder in compliance with all applicable federal, state, and local laws and regulations. The Contractor shall use only licensed personnel to perform work required by law to be performed by such personnel. Any procurement of professional services under this contract shall be in accordance with the Alabama State laws and BJCTA Procurement Policy Manual.

6. Composition of Architect-Engineer

If the Architect-Engineer hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

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**EXHIBIT F
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The Architect-Engineer's responsibilities in connection with administration of the construction contract contemplated by this contract shall not be an assumption of, or relieve the construction contractor of liability for, the construction contractor's obligations to the Authority for satisfactory performance and timely completion of the construction contract.

8. Contract Identification Number

The contract number shown on the cover sheet of this contract shall be prominently shown on all correspondence, invoices, and submittals.

9. Design According to Regulatory and Statutory Requirements

The Contractor warrants that designs and specifications meet all applicable statutes, codes, regulations, and ordinances; and shall indemnify and hold harmless the Authority from claims and costs arising out of errors and omissions relating to such statutes, codes, regulations, and ordinances.

10. Design Within Funding Limitations

(a) The Contractor shall accomplish the design services required under the contract so as to permit the award of a contract, using the Authority's procedures, for the construction of the facilities designed at a price that does not exceed the estimated construction contract price as set forth in paragraph "c" below. When bids or proposals for the construction contract are received that exceed the estimated price, the Contractor shall perform such redesign and other services as are necessary to permit contract award within the funding limitation. These additional services shall be performed at no increase in the cost of this contract. However, the Contractor shall not be required to perform such additional services at no cost to the Authority if the unfavorable bids or proposals are the result of conditions beyond the Contractor's reasonable control. Should additional services be required to redesign within the funding limitations as a result of conditions beyond the Contractor's reasonable control, such services will be paid for at a cost and fee to be negotiated.

(b) The Contractor shall promptly advise the Contracting Officer if it finds that the project being designed will exceed or is likely to exceed the funding limitations and is unable to design a usable facility within these limitations. Upon receipt of such information, the Contracting Officer will review the Contractor's revised estimate of construction cost. The Authority may, if it determines that the estimated construction contract price set forth in this contract is so low that award of a construction contract not in excess of such estimate is improbable, authorize and change in scope or materials as required to reduce the estimated construction contract price set forth in paragraph "c" below, or the Authority may adjust such estimated construction contract price. When bids or proposals are not solicited or are unreasonably delayed, the Authority shall prepare an estimate of constructing the design submitted and such estimate shall be used in lieu of bids or proposals to determine compliance with the funding limitation.

(c) The estimated construction contract price for each segment/project of work shall be agreed to prior to issuance of the solicitation for the construction of that segment/project.

11. Disputes

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact or law arising under or related to this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Architect-Engineer. The decision of the Contracting Officer shall be final and conclusive unless, on or before the 90th day from the date of receipt of such copy, the Architect-Engineer mails or otherwise furnishes a written appeal addressed to the Authority. The decision of the Authority or its duly authorized representative on such appeal shall be final and conclusive as to questions of fact unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. The decision of the Authority or its duly authorized representative shall not be final and conclusive as to questions of law. No action challenging such decision shall be brought more than two years from the date of the Architect-Engineer's receipt of such decision. In connection with any appeal of the Contracting Officer's decision, the Architect-Engineer shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending the final resolution of a dispute hereunder, the Architect-Engineer shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

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(b) If it is determined, on appeal, that the Contracting Officer's interpretation of the contract, direction to the Architect-Engineer, or any other action required by the Contracting Officer's decision was an erroneous determination of the rights and obligations of the parties under the contract, the Architect-Engineer's remedy shall be the same as if such action were a change order under the Changes Clause of this contract.

12. Drawings and Other Data

All designs, drawings, specifications, notes, and other works developed in the performance of this contract shall become the sole property of the Authority and may be used on any other design or construction without additional compensation to the Architect-Engineer. The Authority shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code. With respect thereto, the Architect-Engineer agrees not to assert or authorize others to assert any rights or establish any claim under the design patent or copyright laws. The Architect-Engineer, for a period of three years after completion of the project, agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Architect-Engineer shall have the right to retain copies of all works beyond such period.

13. Drug Free Workplace

During the performance of this contract and in the event of any inconsistency between the provisions of the Consultant's Drug Free Workplace policy and DART's Drug Free Workplace Policy Manual (available upon request), DART's Policy shall prevail.

14. Duty to Inform

If at any time during the performance of this contract, the Consultant becomes aware of actual or potential problems, fault, or defect in the project or any nonconformance with any contract document, federal, state, or local law, rule, or regulation, the Contractor shall give immediate written notice thereof to the Authority's Contracting Officer.

15. Equal Opportunity

During the performance of this contract, the Architect-Engineer agrees that it will, in good faith, afford equal opportunity required by applicable federal, state, or local law to all employees and applicants for employment without regard to race, color, religion, sex, handicapping conditions, or national origin. The Architect-Engineer further agrees to afford equal opportunity required by applicable federal, state, or local law to subcontractors and vendors which are "disadvantaged business enterprises" or "women owned enterprises" (both as defined by federal law or regulation in effect on the date of this contract). The Architect-Engineer agrees to insert the substance of this clause in all subcontracts and purchase orders.

16. Equal Opportunity Reporting

The Contractor agrees that, in connection with the award of any subcontracts in excess of \$5,000 under this contract, the Contractor will require the subcontractor to certify to the Contractor (on a form furnished or approved by the Authority) if the subcontractor is, or is not, a Disadvantaged Business Enterprise ("DBE") or Women Business Enterprise ("WBE") (as defined, in both cases, by the Authority). As a condition to final payment under this contract, the Contractor shall submit to the Authority and certify a list of all DBE and WBE subcontractors, which list shall include a description of the item, work, or services provided by such subcontractors and the dollar amount of each subcontract.

17. Equitable Adjustments

(a) The provisions of the "Changes" clause in the General Provision are supplemented as follows:

(1) Upon written request, the Contractor shall submit a proposal, in accordance with the requirements and limitations set forth in the "Equitable Adjustments" clause, for work involving contemplated changes covered by the request. The proposal shall be submitted within 30 days, or any extension of such time as may be subsequently granted. The Contractor's written statement of the monetary extent of a claim for equitable adjustment shall be submitted in the following form:

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(i) Proposals totaling \$5,000 or less shall be submitted in the form of a lump sum proposal with supporting information to clearly relate elements of cost with specific items of work involved to the satisfaction of the Contracting Officer, or his/her authorized representative.

(ii) For proposals in excess of \$5,000, the claim for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract. The itemized breakdown shall, at the least, include the items specified in subparagraph (a)(2), below.

(iii) Proposals shall not include any cost for insurance provided under the Authority's Owner Controlled Insurance Program (OCIP).

(2) Calculation of Direct Costs

(i) Material quantities by trades and unit costs. (Manufacturing burden associated with material fabrication performed will be considered to be part of the material costs of the fabricated item delivered to the job site.)

(ii) Labor breakdown by trades and unit costs. (Identified with specific item of material to be placed or operation to be performed.)

(iii) Construction equipment exclusively necessary for the change.

(iv) Costs of preparation and/or revision to shop drawings resulting from the change.

(v) Employment taxes under FICA and FUTA.

(vi) Bond Costs -- when size of change warrants revision.

(3) Calculation of Overhead, Profit and Commission

(i) The allowable overhead shall be determined in accordance with the contract cost principles and procedures of BJCTA's Procurement Policy in effect on the date of this contract but in no case shall exceed the following. The percentages for profit and commission shall be negotiated and may vary according to the nature, extent and complexity of the work involved, but in no case shall exceed the following:

(ii) The Contractor or any subcontractor at any tier shall not be allowed any commission on the allowable profit or commission of any lower-tiered subcontractor. Equitable adjustments for deleted work shall include credits for overhead, profit, and commission. On proposals covering both increases and decreases in the amount of the contract, the application of overhead and profit shall be on the net change in direct costs for the Contractor or subcontractor performing the work.

(iii) The total percentages for profit and commission shall not exceed 20% of the direct costs and overhead regardless of the number of lower-tier subcontractors involved in the changed work.

(4) The Contractor shall submit with the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the contract in its entirety.

(5) In considering a proposal, the Authority shall check estimates in detail, utilizing unit prices where specified or agreed upon, with a view to arriving at an equitable adjustment.

(6) After receipt of a proposal the Contracting Officer shall act thereon. If the necessity to proceed with a change does not allow time properly to check a proposal, the change cannot be reasonably estimated, or in the event of a failure to reach an agreement on a proposal, the Authority may order the Contractor to proceed on the basis of price to be determined at the earliest practicable date. If appropriate, the contractor may be required to proceed in accordance with the General Provision entitled "Change Order Accounting."

(7) If a mutually acceptable agreement cannot be reached, the Contracting Officer may determine the price

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unilaterally, subject to the "Disputes" clause of the General Provisions.

(b) The provisions of the "Differing Site Conditions" clause prescribed by the General Provisions, are supplemented as follows: The Contractor shall submit all claims for equitable adjustment in accordance with, and subject to the requirements and limitations set out in paragraph (a) of this "Equitable Adjustments" clause.

18. Examination and Retention of Records

(a) The Contracting Officer and his representatives shall have the audit and inspection rights described in the applicable paragraphs (b) and (c), below.

(b) If this or any price adjustment to this contract is a cost reimbursement type, incentive, time and materials, labor hour, or price redeterminable contract or price adjustment, or any combination thereof, the Contractor shall maintain, and the Contracting Officer and his representatives shall have the right to examine, all books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. Such right of examination shall include inspection at all reasonable times at the Contractor's facilities, or such parts thereof, as may be engaged in or maintain records in connection with the performance of this contract.

(c) If the Contractor submitted certified cost or pricing data in connection with the pricing of this contract or if the Contractor's cost of performance is relevant to any change or modification to this contract, the Contracting Officer and his representatives shall have the right to examine all books, records, documents, and other data of the Contractor related to the negotiation, pricing, or performance of such contract, change, or modification for the purpose of evaluating the costs incurred and the accuracy, completeness, and currency of the cost or pricing data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the costs incurred and the cost or pricing data submitted, along with the computations and projections used therein.

(d) The materials described in (b) and (c) above shall be made available at the office of the Contractor at all reasonable times for inspection, audit, or reproduction until the expiration of three (3) years from the date of final payment under this Contract, except that:

(1) if this contract is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three (3) years from the date of any final settlement; and

(2) records which relate to appeals under the Disputes Clause of this contract or litigation, or the settlement of claims arising out of the performance of this contract, shall be made available until such appeals, litigation, or claims have been resolved.

(e) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts exceeding \$10,000 hereunder, altered to reflect the proper identification of the contracting parties and the Contracting Officer under the prime contract.

19. Excusable Delays

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Authority in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless -

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- (1) the subcontracted supplies or services were obtainable from other sources;
- (2) the Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and
- (3) the Contractor failed to comply reasonably with this order.

(c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Authority under the Termination Clause of this contract

20. Federal, State, and Local Taxes

The contract price includes all applicable federal, state, and local taxes and duties. The Authority is exempt from Alabama state and local sales and use taxes, and any such taxes included on any invoice or voucher received by the Authority shall be deducted from the amount of the invoice or voucher for purposes of payment.

21. Final Acceptance

If the Authority determines that all contractual requirements have not been satisfied, it shall withhold issue of the Notice of Final Acceptance until completion of all outstanding requirements. Before final payment, the Contractor shall execute and deliver to the Contracting Officer a release of all claims against the Authority arising under or by virtue of this contract and such other documents as may be required by the Contracting Officer.

22. Fixed Fee

(a) The Authority shall pay the Contractor for performing this contract the fixed fee, as outlined in Exhibit D, Level of Effort Fixed Fee Schedule/Fixed Price Task Order Fee Schedule.

(b) Payment of the fixed fee shall be made as specified above; provided, that after payment of 80 percent of the fixed fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Authority's interest. This reserve shall not exceed 20 percent of the total fixed fee or \$100,000, whichever is less.

23. Governing Law

The rights, obligations, and remedies of the parties shall be governed by the laws of the State of Alabama. Whenever there is no applicable state statute or decisional precedent governing the interpretation of, or disputes arising under or related to, this contract, then federal common law, including the law developed by federal boards of contract appeals, the United States Claims Court (formerly the Court of Claims), and the Comptroller General of the United States, shall govern. Venue for any action shall lie exclusively in Jefferson County, Alabama. This is the complete agreement between the parties. If any provision of the contract is found to be invalid or unenforceable, the remaining provisions shall not be impaired.

24. Interest of Public Officials

The Architect-Engineer represents and warrants that no employee, official, or member of the Board (Executive Committee) of the Authority is or will be pecuniarily interested or benefited directly or indirectly in this contract. The Architect-Engineer further represents and warrants that it has not offered or given gratuities (in the form of entertainment, gifts, or otherwise) to any employee, official, or member of the Board (Executive Committee) of the Authority with a view toward securing favorable treatment in the awarding, amending, or evaluating the performance of this contract. For breach of any representation or warranty in this clause, the Authority shall have the right to annul this contract without liability and/or have recourse to any other remedy it may have at law.

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The Contractor shall fully indemnify and hold harmless the Authority and all of its directors, officers, employees, and agents from any and all contractual and negligence claims, demands, causes of action, damages, losses, and expenses (including attorney's fees) of whatsoever nature, character, or description that any person or entity has or may have arising out of or related to the breach of or failure to perform the contract or any sub agreements thereunder or resulting from any negligent act, omission, misconduct, or fault of the Contractor or subcontractors and their employees and agents.

26. Independent Contractor

The Contractor at all times shall be an independent contractor. The Contractor shall be fully responsible for all acts and omissions of its employees, subcontractors, and their suppliers, and shall be specifically responsible for sufficient supervision and inspection to ensure compliance in every respect with the contract requirements. There shall be no contractual relationship between any subcontractor or supplier of the Contractor and the Authority by virtue of this contract. No provision of this contract shall be for the benefit of any party other than the Authority and the Contractor.

27. Infringement

(a) The Contractor agrees to defend, indemnify, and hold harmless the Authority and its subsidiaries, directors, officers, employees, agents, successors and assignees (hereinafter "Indemnified Persons") against any demand, claim, cause of action, suit, proceeding, or judgment that any service or design, or product called for in any service of design, provided by the Contractor under this Contract (herein called "deliverables") that infringes any patent, copyright, trademark, service mark, trade dress, utility model, industrial design, mask work, trade secret or other proprietary right of a third party. The Contractor will pay any and all costs of such defense and settlement (including, without limitation, interest, fines, penalties, costs of investigation, costs of appeals, and attorney 's fees), and will pay any and all costs and damages finally awarded against any of the Indemnified Persons. The Authority shall have the right to employ separate counsel and participate in its defense. No settlement pertaining to the Authority's right to use the deliverables as provided herein shall be made without the Authority's prior written consent.

(b) In the event that any deliverables furnished hereunder, or called for in any design or services provided under this Contract, is in any suit, proceeding, or judgment held to constitute an infringement on any third party's right and its use

is enjoined, Contractor shall use its best efforts immediately, and at its own expense to: (i) procure the right for the Authority to continue using the deliverable, (ii) modify the deliverable, or (iii) provide for the replacement of the deliverable with an alternative product that is functionally equivalent to the deliverable. In the event the Contractor is unable to provide the Authority with one of the forms of relief described in this subparagraph, the Contractor shall reimburse the Authority the total charges the Authority paid for the deliverable that is held to constitute an infringement.

28. Inspection of Services

(a) The word "services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.

(b) The Consultant shall provide and maintain an inspection system acceptable to the Authority covering the services under this contract. Complete records of all inspection work performed by the Consultant shall be maintained and made available to the Authority during contract performance and for as long afterwards as the contract requires.

(c) The Authority has the right to inspect and test all services called for by the contract, to the extent practicable at all places and times during the term of the contract. The Authority shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If any of the services performed do not conform with contract requirements, the Authority may require the Consultant to perform the services again, at no additional cost or fee, in conformity with contract requirements. When the defects in services cannot be corrected by reperformance, the Authority may (1) require the Consultant to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce any fee payable under the contract to reflect the reduced value of the services performed.

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(e) If the Consultant fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the Authority may (1) in addition to any other remedies available to the Authority by contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances or (2) terminate the contract for default.

29. Invoicing and Payment**(a) Invoicing**

(1) Invoices shall be submitted once per month in triplicate (one original and two copies) to:

Accounts Payable
P.O. Box 10212
Birmingham, AL 35202

and shall conform to policies or regulations adopted from time to time by the Authority. Invoices shall be legible and shall contain, as a minimum, the following information: (1) the contract and work order numbers (if any); (2) a complete itemization of all costs including quantities ordered and work order numbers (if any); (3) any discounts offered to the Authority under the terms of the contract; (4) evidence of the acceptance of the supplies or services by the Authority; and (5) any other information necessary to demonstrate entitlement to payment under the terms of the contract, i.e., original invoices/receipts, legible certified copies, or legible copies with a certified attestation of same; (6) timesheets for all personnel for whom payment is requested.

(2) Subject to the withholding provisions of the contract, payment shall be made within thirty (30) days after the Authority's receipt of a properly prepared and approved invoice.

(3) The Contractor shall invoice the Authority for actual work performed, plus incurred other direct costs and travel expenses as defined by the General Provision entitled "Allowable Cost and Payment" and the "Miscellaneous Expense Policy", Exhibit T.

(4) The Consultant shall invoice the Authority for actual hours worked multiplied by the actual labor rates. Fractional parts of an hour shall be payable on a prorated basis. Contractor shall substantiate cost when required by the Contracting Officer by evidence of payment and individual timecards. The timecards shall describe the

efforts performed for which reimbursement of cost is requested.

(5) Fixed fee shall be shown as a separate line item on the invoices and shall be calculated pursuant to the Special Provision entitled, "Fixed Fee" and Special Provision entitled "Fixed Fee Schedule" of this contract.

(6) Overhead (indirect cost rates) shall be shown as a separate line item (for each firm) computed at the rate or at such rate as may be approved, or designated by the Contracting Officer under the terms of the contract.

(7) All charges for other direct costs shall be apparent on the face of the invoice and shall be substantiated by an original invoice, or signed legible copy, from the vendor.

(8) All incurred travel expenses shall be invoiced by the Contractor in accordance with Exhibit T, entitled "Miscellaneous Expense Policy".

(9) All invoices shall be signed by a responsible official of the Contractor.

(10) Invoices will reflect the negotiated labor rates, as shown in the Direct Labor Rate Table. All rate changes and new staff, based on the previous month's data, will be reflected on the "Schedule of Rate Changes and New Hires", (Schedule 8) included with the invoice.

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(1) Payment shall be made monthly of the amount and value of the work and value of the work and services performed by the Contractor under this contract. The invoices for payment shall be prepared by the Contractor and accompanied by any supporting data required by the Contracting Officer.

(2) Upon approval of the invoice by the Contracting Officer, payment upon properly executed vouchers shall be made to the Contractor, of 100 percent of the approved cost, less all previous payments. Upon receipt of payment, the Contractor shall then pay all appropriate subcontractors within five (5) working days from receipt of payment. In the event that this requirement is not met, the Authority, at its discretion, may withhold up to the amount payable to the subcontractor(s) until such time as the Contractor provides proof to the Authority that this requirement has been satisfied.

(3) Payment for invoices by the Authority shall not constitute the Authority's agreement that all costs therein are allowable, and the allowability of particular costs may be questioned at any time in accordance with the terms and conditions of this contract.

30. Interest on Contractor Indebtedness

(a) Notwithstanding any other clause of this contract, all amounts that become payable by the Contractor to the Authority under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid. In no event shall the interest charged or payable hereunder exceed that allowable under Alabama law.

(b) Amounts shall be due at the earliest of the following dates:

(1) the date fixed under this contract;

(2) the date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination;

(3) the date the Authority transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt (unless a later date is set forth therein); or

(4) if this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

31. Liability for Authority Costs Resulting from Design Errors or Deficiencies

Architect-engineer contractors shall be responsible for the professional quality, technical accuracy, and coordination of all services required under their contracts. A firm may be liable for Authority costs resulting from errors or deficiencies in designs furnished under its contract. Therefore, when a modification to a construction contract is required because of an error or deficiency in the services provided under an architect-engineering contract, the contracting officer (with the advice of technical personnel and legal counsel) shall consider the extent to which the architect-engineer contractor may be reasonably liable. The contracting officer shall enforce the liability and collect the amount due, if the recoverable cost will exceed the administrative cost involved or is otherwise in the Authority's interest. The contracting officer shall include in the contract file a written statement of the reasons for the decision to recover or not recover the costs from the firm.

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Except as otherwise provided, to the extent that Chapter 7 of the Authority's Procurement Policy, entitled "Cost Principles," applies to this contract, no imputed or other forms of interest shall be allowable for additional work or other costs or expenses.

33. Notice and Approval of Restricted Designs

In the performance of this contract, the Architect-Engineer shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the Contracting Officer, the Architect-Engineer shall not, in the performance of the work called for by this contract, produce a design or specification such as to require in this construction work the use of structures, products, materials, construction equipment, or processes which are known by the Architect-Engineer to be available only from a sole source. As to any such design or specification, the Architect-Engineer shall report to the Contracting Officer giving the reason or reasons why it is considered necessary to so restrict the design or specification

34. Notice of Labor Disputes

(a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor immediately shall give notice, including all relevant information, to the Contracting Officer.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract under which a labor dispute may delay the timely performance of this contract; except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the Contractor, as the case may be, of all relevant information concerning the dispute.

35. Order of Precedence

In the event of any inconsistency between the provisions of the solicitation (including any resulting contract), the inconsistency shall be resolved by giving precedence in the following order: (a) the Schedule; (b) Special Solicitation Instructions and Conditions; (c) Solicitation Instructions and Conditions; (d) Special Provisions; (e) General Provisions; (f) other provisions of the contract whether incorporated by reference or otherwise; and (g) the specifications or statement of work.

36. Payment for Overtime Premiums

No overtime premiums shall be paid without the prior written approval of the Contracting Officer. When, and if, overtime is approved by the Contracting Officer, neither fee nor overhead shall be applied or allowed on the premium portion of overtime charges.

37. Permits, Approvals, and Authorizations from Public Entities

Upon request of the Contracting Officer, the Architect-Engineer shall assist in applying for and obtaining permits, approvals or authorizations from public entities having jurisdiction over the project and shall make such supplementary or clarifying drawings or specifications so as to allow the obtaining of all such permits, approvals, or authorizations at no additional cost.

38. Price Reduction for Defective Cost or Pricing Data

(a) If any price, including profit or fee, negotiated in connection with, or under, this contract (including any modifications thereto) was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its respective Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete,

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accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly, and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a), above, due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor (if there was no subcontract) was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(c) Before awarding any subcontract expected to exceed \$100,000 when entered into, or before pricing any subcontract modification involving a pricing adjustment expected to exceed \$100,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price of the subcontract or modification thereto is --

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

(d) The Contractor shall require the subcontractor to certify in substantially the form prescribed in section 3-505 of the Authority's Procurement Policy that, to the best of its knowledge and belief, the data submitted under paragraph (a), above, were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(e) The substance of subparagraphs (c) and (d) and this subparagraph (e) of this clause shall be included in all subcontracts expected to exceed \$100,000 when entered into.

39. Price Reduction for Defective Cost or Pricing Data (Modifications)

(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, of more than \$100,000, except that this clause does not apply to any modification for which the price is:

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

(b) If any price (including profit) or fee negotiated in connection with any modification covered by this clause under paragraph (a), above, was increased by any significant amount because (1) the Contractor or subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its respective Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished to the Contractor (in support of the subcontractor cost estimates) cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(c) Any reduction in the contract price under paragraph (b), above, due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor (if there was no subcontract)

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was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(d) Before awarding any subcontract expected to exceed \$100,000 when entered into, or pricing any subcontract modification involving a pricing adjustment expected to exceed \$100,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price of the subcontract or modification thereto is --

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

(e) The Contractor shall require the subcontractor to certify in substantially the form prescribed in section 3-505 of the Authority's procurement regulations that, to the best of its knowledge and belief, the data submitted under paragraph (d), above, were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(f) The Contractor shall insert the substance of subparagraphs (d) and (e) and this subparagraph (f) of this clause in each subcontract that exceeds \$100,000 when entered into.

40. Pricing of Adjustments

When costs are a factor in any determination of a contract price adjustment, pursuant to the "Changes" clause or any other provision of this Contract, such costs shall be in accordance with Chapter 7 (Cost Principles) of the Authority's Procurement Regulations in effect on the date of this Contract. In the absence of specific directions in Chapter 7, the Federal Acquisition Regulation (FAR) Part 31 will apply.

41. Prompt Payment

The Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of its contract no later than 10 (ten) calendar days from receipt of each payment the prime receives from the Authority. The Contractor agrees further to release retainage payments (if applicable) to each subcontractor within ten (10) calendar days after the subcontractor's work is satisfactorily completed and final payment has been made to the subcontractor. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval from the Contracting Officer.

42. Publicity Releases

All publicity releases or releases of any documents or electronic information, including but not limited to, reports, papers, articles, maps, or other documents in any way concerning this contract or the work hereunder which the Contractor or any of its subcontractors desires to make for purposes of publication in whole or in part, shall be subject to approval by the Contracting Officer prior to release.

43. Records

As used in Exhibit E, Provision 2, Audit and Inspection of Records, "records" include books, documents, recordings, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, or in the form of computer data, or in any other form.

BIRMINGHAM JEFFERSON COUNTY TRANSIT AUTHORITY

**EXHIBIT F
GENERAL PROVISIONS****(ARCHITECT/ENGINEER SERVICES – FIRM FIXED PRICE)****44. Registration of Designers**

The design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the State of Alabama in the particular professional field involved.

45. Removal of Contract Personnel

(a) The Contractor and any subcontractor acknowledge that any person assigned to work under this Contract must perform their duties so as to not unduly impair contract performance. By assigning a person to work under this Contract, the Contractor agrees to be responsible for the behavior of that person during contract performance.

(b) The Contractor acknowledges that the Authority has the right to require the removal of any Contractor or subcontractor employee that the Contracting Officer determines, at his sole discretion, to be negatively affecting performance of work under the contract. Examples of such behavior include: (1) conduct which poses a threat to the safety of anyone working under the contract; (2) conduct which is disruptive to contract performance; (3) careless work performance; and (4) other behavior determined by the Contracting Officer to be objectionable or unduly hindering contract performance.

(c) Upon receipt of written notice from the Contracting Officer that a person's behavior is unduly impairing contract performance, the Contractor agrees to remove that person from doing any further work on the contract, and to cause that person to be removed from the worksite. The Contractor agrees that it is not entitled to any additional costs it may incur as a result of the removal of the person named by the Contracting Officer.

46. Removal of Subcontractor and Outside Consultant

The Contracting Officer may require, in writing, that the Architect-Engineer remove or terminate any subcontractor, outside associate, consultant, supplier, or materialmen that the Contracting Officer deems objectionable.

47. Responsibility of the Architect-Engineer

(a) The Architect-Engineer shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Architect-Engineer under this contract. The Architect-Engineer shall, without additional compensation, correct or revise any errors or deficiencies in his designs, drawings, specifications, and other services.

(b) Neither the Authority's review, approval, or acceptance of, nor payment for, any of the services required under this contract shall be construed to operate as a waiver of any duties of the Architect-Engineer nor any rights of the Authority under this contract or of any cause of action arising out of the performance of this contract, and the Architect-Engineer shall be and remain liable to the Authority in accordance with applicable law for all damages to the Authority caused by the Architect-Engineer's negligent performance of any of the services furnished under this contract.

(c) The rights and remedies of the Authority provided for under this contract are in addition to any other rights and remedies provided by law.

48. Royalties and Patents

The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and shall save the Authority harmless from loss on account thereof, except when a particular design, process, or product of a particular manufacturer is specified by the Authority; provided that, if the Contractor has reason to believe that the design, process, or product specified infringes a patent, the Contractor shall be responsible for such loss unless it promptly gives such information to the Contracting Officer.

49. State and Local Taxes

The Authority is exempt from Alabama state and local sales and use taxes. Any taxes for which the Authority is exempt (or for which the Contractor or any subcontractor would be exempt if it properly utilized the Authority's exemption) shall

BIRMINGHAM JEFFERSON COUNTY TRANSIT AUTHORITY

**EXHIBIT F
GENERAL PROVISIONS****(ARCHITECT/ENGINEER SERVICES – FIRM FIXED PRICE)**

be unallowable costs under this contract. The Authority will cooperate with the Consultant by providing appropriate certificates to permit the Consultant to obtain the benefit of the Authority's exemption.

50. Subcontractors and Outside Consultants

Any subcontractors and outside associates or consultants required by the Architect-Engineer in connection with the services covered by the contract will be limited to such individuals or firms as were specifically identified and agreed to by the Authority in connection with the award of this contract. Any substitution in such subcontractors, associates, or consultants will be subject to the prior written approval of the Contracting Officer

51. Suspension of Work

(a) The Contracting Officer may order the Architect-Engineer in writing to suspend all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the Authority.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended or delayed by an act of the Contracting Officer in the administration of this contract, or by his failure to act within the time specified in this contract (or, if no time is specified, within a reasonable time), an adjustment shall be made for any increase in cost of performance of this contract (excluding profit) necessarily caused by such unreasonable suspension or delay, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension or delay to the extent (1) that performance would have been suspended or delayed by any other cause, including the fault or negligence of the Architect-Engineer, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this contract.

(c) No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the Architect-Engineer shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension or delay, but not later than the date of final payment. No part of any claim based on the provisions of this clause shall be allowed if not supported by adequate evidence showing that the cost would not have been incurred but for a delay within the provisions of this clause.

52. Termination

(a) The Contracting Officer may, by written notice to the Architect-Engineer, terminate this contract in whole or in part at any time, either for the Authority's convenience or because of the failure of the Architect-Engineer to fulfill his contract obligations. Upon receipt of such notice, the Architect-Engineer 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 such other information and materials as may have been accumulated by the Architect-Engineer in performing this contract, whether completed or in process.

(b) If the termination is for the convenience of the Authority and if this is a fixed price contract, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.

(c) If the termination is due to the failure of the Architect-Engineer to fulfill his contract obligations, the Authority may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Architect-Engineer shall be liable to the Authority for any additional cost occasioned to the Authority thereby.

(d) If, after notice of termination for failure to fulfill its contract obligations, it is determined that the Architect-Engineer had not so failed, the termination shall be deemed to have been affected for the convenience of the Authority. In such event, adjustment in the contract price shall be made as provided in paragraph (b) of this clause.

(e) The rights and remedies of the Authority provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

BIRMINGHAM JEFFERSON COUNTY TRANSIT AUTHORITY

EXHIBIT F
GENERAL PROVISIONS

(ARCHITECT/ENGINEER SERVICES – FIRM FIXED PRICE)

53. Title to Submittals

All information, drawings, or other submittals required to be furnished by the Contractor to the Authority under this contract shall become the property of the Authority

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY



REQUEST FOR QUALIFICATIONS

Q-22-10-CG

**CONSTRUCTION MANAGEMENT SERVICES
CONSULTANT**

EXHIBIT G

DISADVANTAGED BUSINESS ENTERPRISE

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY

EXHIBIT G

DBE PROVISIONS

For assistance in identifying subcontracting opportunities or with questions concerning the provisions in this Exhibit ONLY, contact [Mikeshia Harvill](#) at (205) 521-0135.

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1. Definitions and Interpretations

The Authority will utilize the following definitions to identify Disadvantaged Business Enterprise (DBE) Program eligibility standards. The following definitions and any other definitions related to the DBE program have the same meaning as defined in 49 CFR Part 26.

(a) "Disadvantaged Business Enterprise" or "DBE" means a for profit small business concern: (1) which is at least 51 percent owned by one or more socially or economically disadvantaged individuals, or in the case of a corporation in which 51 percent of the stock is owned by one or more such individuals; and (2) whose management and daily business operation are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(b) "Small Business Concern" means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in section 26.65(b).

(c) "Socially and Economically Disadvantaged Individual" means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and includes any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

- (1) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- (2) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese cultures or origin, regardless of race;
- (3) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (4) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands, Republic of Palau, the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (5) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;
- (6) Women;
- (7) "Tribally-owned concern" means any concern at least 51 percent owned by an Indian tribe;
- (8) "Any individual groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA) at such times as the SBA designation becomes effective; and
- (9) Any individual who the Authority finds to be socially and economically disadvantaged on a case-by-case basis.

(d) "DOT" means the U.S. Department of Transportation including the Federal Transit Administration (FTA).

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EXHIBIT G
DBE PROVISIONS

(e) "Good Faith Efforts" means efforts to achieve a DBE goal or other requirement that, by their scope, intensity and appropriateness to the objective, can reasonably be expected to fulfill the DBE program requirement.

2. Banks and Financial Institutions

The Contractor is encouraged to utilize the services of disadvantaged, minority and woman-owned banks and financial institutions. The identity of such banks is available, upon request, from the Authority's BJCTA COMPLIANCE OFFICER.

3. Certification of DBEs

There are five certifying agencies in the state of Alabama. They are listed below:

- Alabama Department of Transportation (ALDOT)
- Alabama State Port Authority
- Birmingham Airport Authority
- Huntsville International Airport
- Wave Transit System (Mobile, AL)

4. Credit Toward Goals

The Authority will count DBE participation toward the overall and contract goals as provided in 49 CFR 26.55.

5. DBE Modifications or Substitutions

This Provision applies to all modifications and substitutions under this Contract. The Contractor will be required to comply with this Provision to the extent needed to achieve the DBE goals agreed to at the time of contract award.

(a) A prime contractor may not terminate a DBE subcontractor or an approved substitute DBE firm listed as fulfilling its contract goal without the expressed written consent of the Contracting Officer. This includes, but is not limited to, instances in which a prime contractor seeks to perform work, originally designated for a DBE subcontractor, with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

(b) The Contracting Officer will grant written consent, after consulting with the BJCTA COMPLIANCE OFFICE for reasons stated in your concurrence document, that the prime contractor has good cause to terminate the DBE firm.

(c) For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects, because of suspension and debarment proceedings pursuant to 2 CFR parts 180, 215, and 1,200, or applicable state law;
- (6) You have determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;

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DBE PROVISIONS

(10) Other documented good cause that you determine compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract, so that the prime contractor can self-perform the work for which the DBE contractor was engaged, or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

(d) Before transmitting your request to terminate and/or substitute a DBE subcontractor, the Offeror/Contractor must give notice in writing to the DBE subcontractor, with a copy to the Contracting Officer, of the its intent to request to terminate and/or substitute, and the reason for the request.

(e) The Offeror/Contractor must give the DBE five days to respond to this notice. In this notice the Offeror/Contractor must notify the DBE subcontractor to advise them and the Contracting Officer of the reasons, if any, why it objects to the proposed termination of its subcontract, and why the Authority should not approve the Offeror's/Contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the Contracting Officer may require a response period shorter than five days. The Contracting Officer shall notify the Offeror/Contractor in writing of his decision as expeditiously as possible.

(f) In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

(g) When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the Offeror/Contractor must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal you established for the procurement.

The Offeror/Contractor must submit a new Intent to Perform as a Subcontractor form for the substitute DBE firm(s) with the request for change, to verify that the new DBE firm(s) is certified by any of the below authorities:

- Alabama State Port Authority
- Birmingham Airport Authority
- Huntsville International Airport
- Wave Transit System (Mobile, AL)

(h) The Contracting Officer shall notify the Offeror/Contractor in writing of his decision as expeditiously as possible. If the contract has been awarded and the Contracting Officer approves the proposed substitution in writing, the Contractor shall provide a copy of the executed subcontract agreement with the proposed DBE firm to the Contracting Officer within ten (10) business days of its receipt of the substitution approval.

(i) If the Contractor does not comply with this Provision, the Authority may elect to apply contract remedies as defined in 49 CFR Part 26, or other contract remedies, as appropriate. Additionally, the Contracting Officer may order that the profits from the terminated portion of the DBE subcontract be forfeited by the Contractor.

6. Demonstration of Good Faith Effort

(a) If an Offeror does not meet the DBE goal, it shall nevertheless be eligible for award of the contract if it can demonstrate to the Contracting Officer that it has made a good faith effort to meet the DBE goal. This good faith efforts documentation should be submitted when the initial response to the Authority's solicitation is due. All contractors, including DBE prime contractors, are required to submit good faith efforts documentation, if necessary. In evaluating an Offeror's good faith effort submission, the Authority will only consider those documented efforts that occurred prior to the good faith efforts determination.

(b) In the event that a firm submitted by an Offeror in accordance with the requirements of the Submission of DBE Utilization Forms and Related Documentation) provision cannot be certified, the Offeror will be notified and given an opportunity to substitute that firm with a certified DBE firm. The Offeror will have ten (10) calendar days from the date of notification to accomplish the substitution. In the event the Offeror is unable to contract with another substitute DBE firm, the good faith efforts that the Offeror made in attempting to contract with a substitute DBE firm must be documented to the Contracting Officer at the end of the same ten (10) calendar day period.

(c) In making a determination that the Offeror has made a good faith effort to meet the DBE goal, the Offeror shall furnish to the Authority, as part of its DBE utilization information provided under the Submission of DBE Utilization Forms and Related Documentation provision, such specific documentation concerning the steps it has taken to obtain DBE participation. By way of illustration and not limitation, the Authority will consider the following information:

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY

EXHIBIT G

DBE PROVISIONS

- (1) Whether the Offeror attended any pre-bid or pre-proposal meetings scheduled by the Authority to discuss, among other matters, DBE participation opportunities and acknowledged receipt of DBE certified vendor lists;
 - (2) Whether the Offeror advertised in general circulation, trade association, and/or minority/women-focus media concerning subcontracting opportunities;
 - (3) Whether the Offeror provided written notice to a reasonable number of DBEs that their interest in the contract was being solicited in sufficient time to allow DBEs to participate effectively;
 - (4) Whether the Offeror followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested;
 - (5) Whether the Offeror selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goals (including, where appropriate, breaking down the contract into economically feasible subcontracts to facilitate DBE participation);
 - (6) Whether the Offeror provided interested DBEs with adequate information about the plans, specifications, scope of work and requirements of the contract;
 - (7) Whether the Offeror negotiated in good faith with interested DBEs regarding their capabilities, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation;
 - (8) Whether the Offeror negotiated in good faith with interested DBEs regarding price, using good business judgment and not rejecting reasonable quotes from interested DBE firms;
 - (9) Whether the Offeror made efforts to assist interested DBEs in obtaining bonding, lines of credit, insurance, etc., as required by the Authority or the Offeror;
 - (10) Whether the Offeror made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services;
 - (11) Whether the Offeror effectively used the services of available minority and women community organizations; contractor groups; local, State, and Federal business assistance offices; and other organizations that provide assistance in the identification of DBEs;
 - (12) Whether the Offeror obtained written documentation from the Authority Surety Support Program Consultant or a bona fide surety company indicating that bonding was denied and for what reason(s), prior to the DBE being rejected as a potential subcontractor for failing to obtain Offeror-required bonding. Documentation furnished by a surety company will be subject to verification by the Authority; and
 - (13) Whether other Offerors have attained a sufficient level of DBE participation to meet the contract goals.
- (d) The Authority will look not only at the different kinds of efforts that the Offeror has made, but also the quantity and intensity of those efforts. Efforts that are merely pro forma are not good faith efforts to meet the goal (even if they are sincerely motivated) if, given all relevant circumstances, the Offeror's efforts could not reasonably be expected to produce a level of DBE participation sufficient to meet the goal.
- (e) Offerors are reminded that the issue of whether or not the Offeror has met or exceeded the established goal and/or demonstrated good faith efforts is considered a matter of the Offeror's responsibility. The Authority will only award contracts to Offerors determined to be responsible. The Contracting Officer, after affording the Authority's DBE Compliance Office an opportunity to make a recommendation, shall be responsible for determining the sufficiency of an Offeror's good faith effort to meet contract goals.
- (f) An Offeror that the Contracting Officer determines is not responsible may request administrative review and reconsideration under the Authority's Procurement Regulations. As part of any reconsideration, if requested, the Offeror may elect to meet in person with the Reconsideration Official (President/Executive Director of the Authority) to discuss credit toward meeting the DBE goal or whether the Offeror made adequate good faith efforts.

7. Offeror's DBE Obligation

The Offeror's DBE Obligation is outlined in an Exhibit C provision entitled Disadvantaged Business Enterprise (DBE) Participation, and the provision entitled Non-Discrimination Assurance found in Exhibit E of this Contract.

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY

EXHIBIT G
DBE PROVISIONS**8. Sanctions for Noncompliance with the Authority's DBE Program Provisions**

Failure of the Contractor to carry out the Authority's DBE program provisions shall constitute a breach of contract and may result in termination of the Contractor for default or such remedy as the Authority may deem appropriate. The Authority reserves the right to apply legal and contract remedies available under Federal, state and local law, including but not limited to, responsibility determinations in future contracts, suspension and debarment procedures as outlined in 49 CFR Part 29, and forfeiture of profits as provided for elsewhere. The Authority will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take steps provided in 49 CFR Section 26.107.

9. Submission of DBE Utilization Forms and Related Documentation

(a) Each Offeror should submit to the Authority an executed Intent to Perform As a Subcontractor form (Attachment 1) for each proposed DBE subcontractor when the initial response to the Authority's solicitation is due. Good faith documentation (if necessary) should also be submitted at this time. The submission of this information is considered an issue of responsibility, and the Authority will not award a contract to any Offeror who has not supplied this documentation.

(b) The Intent to Perform As A Subcontractor form for each proposed DBE subcontractor shall constitute a representation by the Offeror to the Authority that it believes such firm is certified as a DBE, and is ready, willing, and able to perform the work indicated. It shall also represent a commitment by the Offeror that if it is awarded the contract, it will enter into a subcontract with such DBE firm for the work described at the approximate price set forth in the Intent to Perform As A Subcontractor form.

(c) If the DBE subcontractor's participation changes after the forms have been submitted, but prior to award of the contract, the Offeror will be required to immediately notify the Contracting Officer of the changed amount and the reason(s) for the change. The modification and substitutions of DBE firms that occur shall be governed by DBE Modifications or Substitutions (M-107, JAN 13) provision of this Exhibit.

(d) The successful Offeror shall enter into formal subcontract agreements with the DBE firms shown in the submitted Intent to Perform As A Subcontractor form(s) within ten (10) business days after receipt of a contract executed by the Authority. The successful Offeror shall provide the Contracting Officer and the assigned Economic Opportunity Specialist with two copies of each agreement within three (3) business days of execution.

(e) The successful Offeror must also enter into formal subcontract agreements with non-DBE firms and the same shall be provided as stipulated in (d) above.

(f) Each subcontract agreement entered into, regardless of tier, shall include the following non-discrimination clause: "The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor and subcontractor shall carry out applicable requirements of 49 CFR part 26 in the administration of this DOT-assisted contract. Failure to carry out these requirements is a material breach of contract, which may result in the termination of this contract or such other remedy as BJCTA deems appropriate."

(g) Each subcontract agreement must also incorporate into it the Authority's prompt payment and release of retainage clauses found within Exhibit F of this contract, and the provisions for properly terminating a DBE firm consistent with 49 CFR part 26.

(h) Each subcontract will be reviewed by the Contracting Officer or his designee and the Vice President of Diversity or his designee for compliance with the above provisions.

(i) If an Offeror is a DBE and lists itself on the Intent to Perform As A Subcontractor form, it is required to perform the work indicated with its own work force.

ATTACHMENT 6 TO EXHIBIT G

BJCTA - DBE FORM SOLICITATION NUMBER: _____

INTENT TO PERFORM AS A SUBCONTRACTOR FOR A CONTRACT AWARD

1. Name of Offeror / Prime Contractor _____.
2. The undersigned has been certified by ALDOT Certification # _____.
3. The undersigned is prepared to perform the following described work and/or supply the material listed in connection with the above project (where applicable specify "supply" or "install" or both):

and at the following price \$ _____.

With respect to the proposed subcontract described above, _____% of the dollar value of such subcontract will be sublet and/or awarded to non-DBE contractors.

NOTICE: If the DBE firm is not sub-subcontracting any of the work described above, a zero (0) must be shown in the blank above.

PHONE: _____

(Print or Type - Name of Signature of
Owner, President or Authorized Agent of
DBE firm)

DECLARATION OF PRIME CONTRACTOR

I HEREBY DECLARE AND AFFIRM that I am the _____,
(Title of Declarant)

a duly authorized representative of _____
(Name of Prime Contractor)

to make this declaration and that I have personally reviewed the material and facts set forth in this Intent to Perform form. To the best of my knowledge, information, and belief, the facts and representations contained in this form are true, the owner or authorized agent of the DBE firm signed this form in the place indicated, and no material facts have been omitted.

Except as authorized by the Contracting Officer, the undersigned will enter into a formal agreement with the listed DBE firm for work as indicated by this form within ten (10) business days after receipt of the contract executed by the Birmingham Jefferson County Transit Authority. The undersigned will provide the Contracting Officer a copy of that agreement within three (3) business days of execution.

The Prime contractor designated the following person as their DBE Liaison Officer:

(Name-Please Print) (Phone)

Pursuant to 49 CFR Section 26.107, any person [entity] who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes may be referred to the Department of Transportation, and possibly the Department of Justice, for prosecution.

(Name of Declarant)

(Signature)

(Date)

ATTACHMENT 7 TO EXHIBIT G

BIRMINGHAM JEFFERSON COUNTY TRANSIT AUTHORITY
D/M/WBE FORM
INSTRUCTIONS FOR CONTRACTORS
"HOW TO FILL OUT VENDOR PAYMENT REPORT"

The Vendor Payment Report is to be filled out by the Contractor and submitted with each invoice. The instructions below correspond to each item on the reverse side of the report. Please follow the instructions.

1. **Invoice No.**
Fill in the invoice number accompanying this report.
2. **Report No.**
Fill in the number of the report you are sending in sequence. For example: If this is the second invoice you are submitting, you are sending in Report No. 2.
3. **Reporting Period**
This is to be filled in to state the period of time you are reporting. Example: From: April 1, 1991 - To: April 30, 1991.
4. **BJCTA Contract Number**
Fill in the contract number assigned to your project by BJCTA.
5. **Type of Contract**
Designate the type of contract that has been awarded your company by BJCTA.
6. **Contractor's Business Name, Address and Telephone Number**
Fill in your company's name, address, and telephone number.
7. **Date of Contract Award**
Fill in the date contract was executed by both you and BJCTA.
8. **Scheduled Date of Completion**
Fill in completion date of contract as written in contract.
9. **Original Contract Amount**
Fill in dollar amount of original contract agreed upon by you and BJCTA.
10. **Current Amended Contract Amount and Date**
Fill in dollar amount of original contract plus/minus the dollar amount agreed upon at a later date as a result of contract modifications, if applicable. Include date modification was executed.
11. **Total Amount Received to Date**
Fill in the dollar amount you have received from BJCTA to-date.
12. **Total Amount Owed**
Fill in the dollar amount of the contract minus amount paid to you by BJCTA.
13. **Committed Disadvantaged/Minority/Women-Owned Participation**
Fill in the percentage of D/M/WBE participation you committed to obtain in the contract.

14. **Instructions for Calculation of Disadvantaged/Minority/Women-Owned Business Enterprise Percentage**
15. **Actual Disadvantaged/Minority/Women-Owned Business Enterprise Percent Paid-to-Date**
Fill in the calculated dollar amount paid to the D/M/WBE divided by the dollar amount you received from BJCTA.
16. **Name of Subcontractors**
Name all DBE subcontractors. (Use additional sheets as necessary.)
17. **Disadvantaged Business Enterprise**
State whether the subcontractor is a DBE/MBE/WBE.
18. **Description of Work**
State the work performed by the D/M/WBE subcontractor.
19. **Amount and Date of Last Payment**
State the amount and date of last payment made to each D/M/WBE subcontractor. Submit evidence of payment, i.e., cancelled check, check register, etc.
20. **Subcontract Value (Dollars)**
State the committed dollar value to the D/M/WBE subcontractor for the duration of the contract.
21. **Total Amount Paid-to-Date (Dollars)**
Add all amounts paid to each D/M/WBE subcontractor to date.
22. **Percent of Earned Progress to Date**
State dollar amount paid to the D/M/WBE subcontractor divided by the amount committed to them.
23. **Amount of This Invoice Allocated to the Subcontractor**
Fill in how much of this invoice will be paid to each D/M/WBE subcontractor.

ATTACHMENT 2 TO EXHIBIT G
Birmingham Jefferson County Transit Authority
DBE FORM

VENDOR PAYMENT REPORT

Instructions: All prime contractors are required to complete and submit this report as specified the contract, or as requested the Contracts Specialist, until final payment of the contract..

For Official Office Use Only	1) Invoice No.	2) Report No.
	3) Reporting Period From: _____ To: _____	

in
by

To complete this report, see detailed instructions on the proceeding page of Exhibit G. **This report must be submitted with invoice.**

4) BJCTA Contract Number		5) Type of Contract (X) <input type="checkbox"/> Construction <input type="checkbox"/> Service <input type="checkbox"/> Professional <input type="checkbox"/> Supply		6) Contractor's Business Name, Address and Telephone Number					
7) Date of Contract Award		8) Schedule Date of Completion		9) Original Contract Amount \$ _____		10) Current Contract Amount, Including Modifications (\$ and date) (State amount & date of most recent modification) \$ _____ / _____ / _____			
11) Total Amount <u>Received</u> To Date \$ _____		12) Total Amount Owed \$ _____		13) Committed Disadvantaged, Minority, and Women Disadvantaged-Minority-Women _____ % _____ % _____ %		14) D/M/WBE Instruction for Calculation of Percentage: Dollar amount paid to D/M/WBE divided by dollar amount received by Contractor from BJCTA.		15) Actual Disadvantaged, Minority and Woman-Owned Business Participation % to Date Disadvantaged-Minority-Women _____ % _____ % _____ %	
		Amount of This Invoice							
		\$ _____							
16) Name of Subcontractor	17) DBE / MBE / WBE	18) Description of Work	19) Amount & Date of Payment(s) Made During Current Invoice Period	20) Subcontract Dollars	21) Amount Paid to Date (Dollars)	22) % Paid to Date	23) Amount of This Invoice Allocated to Subcontractor		
			\$		\$				
			\$		\$				
			\$		\$				
			\$		\$				
			\$		\$				
			\$		\$				
			\$		\$				
			\$		\$				
Company Official's Signature & Title			Date Signed		Name & Title of Individual Completing Report				
			/ /						

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY



REQUEST FOR QUALIFICATIONS

Q-22-10-CG

**CONSTRUCTION MANAGEMENT SERVICES
CONSULTANT**

EXHIBIT H

STATEMENT OF WORK/SCOPE OF SERVICES

EXHIBIT H
SCOPE OF SERVICES

A. SCOPE OF SERVICES

The Construction Management Services Consultant (Consultant) shall provide comprehensive and complete services with the assigned responsibility for overall professional, technical, managerial, administrative, and other services required for the comprehensive coordination, design support, construction management, cost control, quality assurance, quality control and schedule control for the elements of the work assigned via this contract.

The Consultant shall perform work on an annual work plan basis. The Consultant shall prepare the annual work plan and the yearly cost proposal based on the approved project schedule and BJCTA requirements for the planned fiscal year. The annual work plan and cost proposal will then be negotiated and brought to the BJCTA Board of Directors for approval of funding.

The work required to be performed under this contract is as follows:

Construction Project Management

Structure project sequencing from the initial project design sketches through final acceptance. Use industry accepted standards and management methods ensure that the various physical items and all various subcontractors required to construct the project arrive on time, meet all project specifications, and are safely integrated into the work site.

Construction Inspection

Provide construction inspection and client representation on various projects and site development projects. Provide the following activities:

Erosion Control Inspection

Ensure that all necessary environmental protection measures are carried out as required by regulatory authorities throughout the project.

Acceptance Inspections

Provide personnel for the inspection of work associated with construction activities, including sampling and testing of materials along with the proper documentation.

Construction Contract Support, Analysis and Recommendations

Deliver estimated quantities, set up line-item bid forms, advertise the project for subcontractor bidding, assist in bidder ranking and selection, and perform all relevant contract management activities to ensure the client receives the best possible construction at the most reasonable price.

Facility Maintenance and Management

Conduct condition assessments for existing infrastructure assets the age and condition of each building system and structure. Provide recommendations on state of good repair.

ADA Management and Transition Plans

Provide support for ADA inspections and building compliance and provide recommendations as needed.

EXHIBIT H

SCOPE OF SERVICES

Pavement Management

Provide pavement management and assess pavement conditions and plan pavement maintenance and rehabilitation activities.

Pavement management, including the estimation of paved surface conditions, prediction of deterioration timelines, and the selection and ranking of proposed resurfacing and/or rehabilitation projects.

Geographic Information Systems (GIS)

Provide GIS solutions that provide information access and informed decision-making. Recommend, specify, customize, and deploy state-of-the-art GIS solutions (including documentation, training, and support).

Create and publish informational maps and reports, Internet map servers, interactive map kiosks, etc.

Inventory mapping and management of infrastructure assets for financial reporting.

Land records management and distributed access to parcel data, plats, subdivisions, engineering drawings, etc.

Predicting, planning, and responding to urban and regional growth.

Management of permitting and construction-related activities such as inspection, standards compliance, work-zone safety, etc.

Provide GIS Support for a variety of Capital projects and planning needs.

Infrastructural Asset Maintenance Management

Provide experience using GIS-centric methods for creating and maintaining a map-based collection of infrastructural assets, their current conditions, their maintenance history, one-time and cyclical maintenance requirements.

Civil Engineering Support

Providing the expertise and guidance in land development and site planning.

Site Planning & Design

The key to a well-planned site is a clear understanding of the end users' goals, needs, and objectives. Our team of professionals will listen intently to owners and stakeholders in order to determine the ideal design for the site. We will then take the outcome of this discussion and create tangible plans that are functional, provide lasting value, and meet regulatory requirements in ways that enhance the property as well and the surrounding areas. Our multi-disciplinary team can provide ALTA surveys, site programming, specific plans and entitlement negotiations, detailed site plans, and local, state and federal regulatory permit coordination as needed for the project.

Permitting

Prepare permit applications whenever necessary on projects on behalf of BJCTA.

EXHIBIT H
SCOPE OF SERVICES

Streetscape Enhancements & Multimodal Enhancements

Manage and provide streetscape enhancements to improve the aesthetic and environmental value of a roadways, bus stops and multimodal locations to allow for safer pedestrian usage or permit special use of a roadway or street.

Landscape Design

Provide hardscape design and landscape plans that integrate with the civil designs for BJCTA's infrastructure.

Geotechnical engineering support

Provide geotechnical engineering and materials engineering and testing. For Capital projects for all project phases. Including but not limited to:

Perform subsurface investigations and provide assessment of geologic and geotechnical risks of projects and sites.

Determine the characteristics of the soil/rock and anticipated behavior of these materials under loading and stress.

Recommend improvements to develop the best-suited geotechnical design parameters.

Materials Testing

Provide materials testing for sites to ensure and make site-specific recommendations.

Planning Services

Prepare planning reports, studies, and associated mapping for transportation projects. Including studies of roadway improvement projects, alignments, and projections for various modes pedestrian use.

Preparation of Proposal**Joint Ventures**

- (a) The Authority encourages bids or offers, as appropriate, from duly constituted Joint Ventures in response to this solicitation. The Authority intends to maximize opportunities for all vendors to participate as prime contractors and actively seeks to do business with these entities. Any offeror that submits a bid or offer as a Joint Venture must identify itself as such an entity and provide a copy with its bid or offer of the Joint Venture Agreement.
- (b) Offerors shall submit one original and ten (10) copies of the proposal document. Each of the proposals shall contain a Solicitation and Proposal Form (BJCTA Form 33.201) with original signature. The proposal shall be submitted on the forms furnished, or copies thereof, shall be completed in ink or typewritten and shall be manually signed. If erasures or other changes appear on the forms, each erasure or change shall be initialed and dated by the person signing the proposal. Telegraphic proposal(s) are not authorized.
- (c) Unnecessarily elaborate proposals and/or lengthy presentations are not desired or required by the Authority.
- (d) Proposal documents should be prepared in single-spaced type, 10 or 12-pitch font, on 8-1/2" x 11" pages using one side of the paper only. Pages should be numbered at the bottom to show the page numbers and total number of pages in the proposal; e.g. Page 1 of 15, Page 2 of 15, etc.

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY

EXHIBIT H

SCOPE OF SERVICES

- (e) A proposal from an individual, sole proprietorship, or a proposed operation under a trade name, shall be signed by the owner.
- (f) A proposal by a partnership shall be executed in the partnership name and signed by all partners; the official address of the partnership shall be shown below the signatures.
- (g) A proposal by a corporation shall be executed in the corporate name by the president or vice-president (or other corporate officer accompanied by the evidence of authority of sign) and the corporate seal shall be affixed and attested by the corporate secretary or assistant secretary.
- (h) A proposal submitted by a joint venture shall list the names of all joint venture members and each mailing address and shall be executed by all joint venture members in the same manner as if they were individually submitted proposal(s). The signature portion of the proposal form shall be altered as appropriate for execution by the joint venture.
- (i) All names and applicable titles shall be typed and printed below the signatures.
- (j) Any and all communications regarding this Solicitation document are to be directed to the attention of:

Birmingham-Jefferson County Transit Authority
1801 Morris Avenue, Second Floor
Birmingham, AL 35203
Attn: Christina Griggs
Phone No.: (205) 961-5594

3. Form and Content Requirements

To be considered complete, the proposal shall be organized according to the Request for Proposals (RFP) requirements. The proposal documents shall be sectionalized as described below. A blank page should precede each section with an index tab extending beyond the far-right side of the page. The index tab should have the appropriated section number typed thereon. At a minimum, the items described in each section below should be addressed.

4. List of Proposal Contents

	Maximum Points	Maximum Pages
<u>Section I - Introduction</u>		
1. Solicitation, Proposal and Award Form	N/A	
2. Introduction		2
<u>Section II - Evaluation Criteria</u>		38
1. Team Composition	150	
2. Subcontracting Opportunities	100	
3. Oral Presentations	100	
4. Project Personnel	100	
5. Project Approach/Understanding	80	
6. Past Performance	30	
7. Firm's Capabilities	20	
8. Transit Experience	20	
TOTAL POINTS	600	
<u>Section III - Supportive Information</u>		10
1. Acceptance of Provisions		N/A
2. Exhibit A - Representation and Certifications		N/A
3. Exhibit B - Attachment 1 - Schedule of Subcontractor/Subconsultant Offeror's Accounting System		N/A
4. Exhibit B – Attachment 2 - Accounting System Certification		N/A
5. Exhibit G –Attachment G-1 - Intent To Perform As A Subcontractor		N/A
TOTAL PAGES		50

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY

EXHIBIT H
SCOPE OF SERVICES

Accounting System Capabilities – BJCTA Accounting System Criteria Requirements will be given to the selected Consultant prior to submission of its cost proposal. The Consultant selected for contract negotiations will be required to supply information regarding its accounting system and submit Exhibit B, Attachment 2.

5. Format

Please limit your submission to a maximum of fifty (50) pages (not including resumes). A maximum two (2)-page introduction letter may be submitted within the fifty (50) page limitations. There is a limitation of up to thirty-eight (38) pages on information directly related to the eight (8) evaluation criteria elements listed in Section II of this document. The remaining pages of supportive information may include graphs, charts, photos, references, etc., and is at your discretion, provided the total fifty (50) page limits is maintained.

6. Section I - Introduction

- (a) The Solicitation and Proposal must be completed and returned by each offeror.

The proposal should be addressed to:

Birmingham-Jefferson County Transit Authority
Solicitation No. Q-22-10-CG
1801 Morris Avenue, Second Floor
Birmingham, AL 35203
Attn: Procurement Department
Phone No.: (205) 521-0101

- (b) The introduction letter should include an introduction of all diverse team members of a joint venture if a joint venture relationship is involved, and/or an introduction of all major subcontractors who may be involved in the performance of the work. For each joint venture member and/or major subcontractor described herein discuss primary business experience, the offerors' overall mission statement, length of time in business, ownership, the location of offices, pertinent telephone numbers and other matters offerors might deem pertinent and introductory in nature.

7. Section II - Evaluation Criteria

Proposals shall be initially evaluated and ranked on the basis of the evaluation factors as related to the Scope of Services in Exhibit H. If the offeror is a joint venture or other form of diverse teaming arrangement, the specific entities comprising the joint venture or diverse teaming arrangement may combine projects performed either by the joint venture or diverse teaming arrangement or in each entity's individual capacity to address evaluation factors. Evidence concerning work on each of the projects shall be sufficient to permit evaluation on the following factors:

TEAM COMPOSITION (MAXIMUM POINTS-150)

BJCTA has strongly encouraged the formation of a Joint Venture as defined in Section 1-301(23) of the BJCTA Procurement Regulations (DPR) to maximize participation of Small Business Private Enterprises as described in the DPR at Section 3-114.

45 points: If you have formed a Joint Venture list the firms that are serving as participants in your Joint Venture. Include with your response to this Request for Proposal a copy of fully executed Joint Venture agreement(s) in a separate enveloped marked "Joint Venture Agreement(s)." The agreement(s) must include a statement of the joint venture partner's participation in terms of profit and loss sharing. The Joint Venture Agreement(s) will not be counted against the total page limitation mentioned in paragraph 5, Section III above.

30 points: Explain your corporate philosophy regarding team composition relating to establishing, building and maintaining relationships with Small Business Private Enterprises within the architectural engineering disciplines through mentor protégé or similar programs.

EXHIBIT H
SCOPE OF SERVICES

75 points: Describe all applicable and pertinent qualifications of the proposed team. The statement of qualifications should include affiliations, educational background, professional licenses, training, managerial experience and length of employment with current firm.

SUBCONTRACTING OPPORTUNITIES (MAXIMUM POINTS-100)

50 points: Describe the composition of the proposed team and their roles and responsibilities, to include the utilization of all subcontractors and how the requirements of Exhibit G of this solicitation will be satisfied.

50 points: Describe any existing mentoring, protégée, and internship programs for small businesses that have been/will be established for both prime and subcontractors during this project.

ORAL PRESENTATION

100 points: Those proposals in the competitive range will be requested to make an oral presentation on specific topics that will be identified by the Authority prior to the oral presentation. Team members will also be asked to solve a practical problem exercise, which will not be identified prior to the oral presentation. This is not an oral presentation on the content of the Offeror's written proposal. Offerors are advised that the oral presentation will be recorded.

PROJECT PERSONNEL (MAXIMUM POINTS –100)

40 points: Describe applicable and pertinent qualifications of the project manager, the key staff, and sub-consultants' staff for project elements and major disciplines including the project managers and key staffs' firm affiliation, education, professional licenses, training, managerial experience, and length of employment with firm. Include an organizational chart and references.

20 points: Include a statement detailing the work to be performed by each joint venture or team member.

20 points: Describe previous experience of the project manager, key staff, and sub-consultants relative to similar projects within the last ten (10) years. Include references.

10 points: Describe time commitments of the project manager and the key staff to the project.

PROJECT APPROACH/UNDERSTANDING (MAXIMUM POINTS –80)

20 points: Demonstrate understanding of the project and provide a detailed description of the performance of the tasks described in Exhibit H of the Scope of Services.

20 points: Describe any potential critical issues or problem areas and provide approaches for a timely resolution of potential conflicts and/or impediments in performing the work described in Exhibit H of the Scope of Services.

20 points: Describe alternate approaches for timely responses to approved changes as they relate to Exhibit H, Scope of Services.

10 points: Describe approaches to achieve a cost-effective design.

10 points: Describe how your quality control policies/procedures will be applied to this project.

PAST PERFORMANCE (MAXIMUM POINTS – (50)

50 points: List projects of similar type, size and complexity, in comparison to the requirements of Exhibit H Scope of Services, performed within the last ten (10) years. Information to be provided shall include: type (scope) of project, size, location, and period of performance and client point of contact information. Evaluation of past performance shall include conformance to contract requirement, quality of services

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY

EXHIBIT H

SCOPE OF SERVICES

performed, adherence to contract budget, **design budget and construction estimate**, and schedules and commitment to client satisfaction. Past performance evaluations may include projects listed and/or referenced by Offeror and/or may also include any other projects known by the Authority.

FIRM'S CAPABILITIES (MAXIMUM POINTS 20)

10 points: Describe the type, size, team composition, and location of similar work performed, as a prime or as a subconsultant, within the last ten (10) years as it may relate to Exhibit H, Scope of Services. Include references.

5 points: Describe approaches for keeping the project on schedule and within budget as it may relate to Exhibit H, Scope of Services.

5 points: Describe project management and coordination procedures for both subconsultant and disciplines as it may relate to Exhibit H, Scope of Services.

TRANSIT EXPERIENCE (MAXIMUM POINTS - 20)

10 points: Describe coordination experience of the proposed team and subcontractors with transit agencies or municipalities.

10 points: Describe local work experience within the BJCTA service area.

8. Section III - Supportive Information

(a). Project descriptions.

(b). Disadvantaged, Minority & Women Owned Business Enterprises participation. It is necessary at this point to have the specific firms(s) listed. Evidence of specific teaming is required. Reference Exhibit B - Attachment 1 and Exhibit G, Attachment 1

(c). Graphs, Charts, Photos, References, etc.

9. Section IV - Administrative Considerations

The terms and conditions contained in this RFP are intended to be incorporated into any resulting contract. The offeror shall explain any area requiring further discussion or make a statement of acceptance of these terms and conditions. Any failure to clearly object to the language contained in the above-mentioned documents shall be construed as acceptance of them verbatim.

Complete: Exhibit A - Representations and Certifications.

Complete: Exhibit B - Attachment 1: Schedule of Subcontractor/Subconsultant Offerors

Complete: Exhibit B - Attachment 2: Offeror's Accounting System Certification

Complete: Exhibit G -Attachment G-1 - Intent To Perform As A Subcontractor Form

10. Selection Procedure

(a) Technical Evaluation

Proposals received will be referred to a selection committee appointed by the Authority for review and evaluation.

(b) Selection Committee Procedures

(i) A selection committee will be appointed to evaluate proposals submitted in response to this solicitation. The proposals will be evaluated and ranked in accordance with the evaluation criteria outlined in Paragraph 7 above. Based upon this evaluation alone, the selection committee may recommend to the Contracting Officer that cost

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EXHIBIT H
SCOPE OF SERVICES

negotiations be entered into with the most highly qualified offeror without the benefit of oral presentations described in paragraph (ii) below and without further discussions.

(ii) The initial evaluation of proposals will be scored in accordance with evaluation criteria established in Paragraph 7, "Section II-Evaluation Criteria" above. Those proposals in the **competitive range will be** requested to make an oral presentation as described in Section II above. Offerors are advised that oral presentations will be recorded. The oral presentations will be scored (**MAXIMUM POINTS – 100**). Offeror's key personnel shall conduct the presentation. Date, time, location, allotted time for the oral presentation, as well as equipment available to Offeror for the oral presentation, shall be provided at a later date.

(iii) The Authority may also determine that discussions are necessary relative to the Offeror's written proposal. The Contracting Officer shall discuss with each offeror found to be in the competitive range, any deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not had a chance to respond. The Contracting Officer is not required to discuss every area where the proposal could be improved. The scope and extent of discussions are a matter of the Contracting Officer judgment.

(v) The Contracting Officer will request a cost proposal from the most highly qualified offeror. After receipt of the cost proposal, negotiations will be conducted to arrive at a fair and reasonable price. The cost proposal shall contain labor rates, labor categories, other direct costs and overhead rates.

(vi) A Certificate of Current Cost or Pricing Data, as specified in paragraph 13 below, will be required to be submitted with all pricing documentation.

(vii) Should cost negotiations be unsuccessful with the most highly qualified offeror, negotiations shall be formally ended with that offeror and begun with the second most highly qualified offeror. Negotiations shall be undertaken in that sequence until a contract is made, or the solicitation is canceled.

(c) The Authority reserves the right to investigate the qualifications of all offerors under consideration and to confirm any part of the information furnished by an offeror, and/or to require other evidence of managerial, financial or technical capabilities which are considered necessary for the successful performance of the work.

12. Authority's Right

The Request for Proposal does not commit the Authority to enter into a contract nor shall the Authority pay for any costs incurred in the preparation and submission of proposals or in the anticipation of a contract. The Authority reserves the right to contract with any responsible offeror replying to this Request for Proposal based solely upon its judgment of the qualifications and capabilities of the offeror.

13. Certificate of Current Cost or Pricing Data

When cost or pricing data must be certified, a certificate shall be included in the contract file along with any award documentation required under these regulations. The offeror or contractor shall be required to submit the certificate as soon as practicable after agreement is reached on the contract price or adjustment.

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY



REQUEST FOR QUALIFICATIONS

Q-22-10-CG

**CONSTRUCTION MANAGEMENT SERVICES
CONSULTANT**

EXHIBIT L

BUSINESS QUESTIONNAIRE

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY
EXHIBIT L
BUSINESS QUESTIONNAIRE (SUPPLIES AND SERVICES)

This questionnaire, the requested list of references, and the authorization to release financial information are used in part to assist in determining a potential contractor's responsibility. Offerors shall submit the Exhibit L information within two (2) workdays from the date of notification by the Authority, or with the offer, if so indicated in the Table of Contents page 2 of the Solicitation, Offer and Award Form, and in accordance with applicable provision(s) in Exhibit B, if any. All information must be current and traceable. Each venturer of a joint venture must submit a separate signed form.

BJCTA reserves the right to make additional inquiries based on information submitted, or the lack thereof. Questions concerning this questionnaire, or the authorization form should be directed to the contact person identified on the Solicitation, Offer and Award Form.

1. Name of Offeror ("Business"): _____
2. List name(s) and business address of officers and directors for corporations, partners for partnerships, and venturers for joint ventures (attach additional pages as necessary).

3. Number of years in business under present business name: _____
4. If applicable, list all other names under which the Business identified above operated in the last 5 years.

5. Annual Gross Revenue (Past year): (M represents millions, K represents thousands)
☐ \$100K or less ☐ \$100K-\$500K ☐ \$500K-\$1M ☐ \$1M-\$5M ☐ \$5M-\$10M
☐ \$10M-\$16M ☐ \$16M or Over
6. Number of current employees: _____
7. Has the Business, or any officer or partner thereof, failed to complete a contract? ☐ Yes ☐ No
8. Is any litigation pending against the Business? ☐ Yes ☐ No
9. Has the Business ever been declared "not responsible" for the purpose of any governmental agency contract award? ☐ Yes ☐ No
10. Has the Business been debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or otherwise disqualified from bidding, proposing, or contracting?
☐ Yes ☐ No
11. Are there any proceedings pending relating to the Business' responsibility, debarment, suspension, voluntary exclusion, or qualification to receive a public contract?
☐ Yes ☐ No
12. Has the government or other public entity requested or required enforcement of any of its rights under a surety agreement on the basis of a default or in lieu of declaring the Business in default?
☐ Yes ☐ No

13. Is the Business in arrears on any contract or debt? ☐Yes ☐No
14. Has the Business been a defaulter, as a principal, surety, or otherwise? ☐Yes ☐No
15. Have liquidated damages or penalty provisions been assessed against the Business for failure to complete work on time or for any other reason? ☐Yes ☐No
16. If a "yes" response is given under questions 8 through 17, please provide a detailed explanation including dates, reference to contract information, contacts, etc. (attach additional pages as necessary).

I, individually and on behalf of the business named in this Business Questionnaire, do by my signature below, certify that the information provided in this questionnaire is true and correct. I understand that any false statements or misrepresentations regarding the Business named above may result in: 1) termination of any or all contracts which BJCTA has or may have with the Business; 2) disqualification of the Business from consideration for contracts; 3) removal of the Business from BJCTA's bidders' list; or/and 4) legal action(s) applicable under federal, state, or local law.

Name: _____ Title: _____

Signature: _____ Date: _____
(Owner, CEO, President, Majority Stockholder or Designated Representative)

LIST OF REFERENCES FOR SIMILAR PROJECTS

Use additional pages as necessary.

1. Project:
Date of Completion (if applicable):
Contact Person:
Company Name:
Address:
Telephone Number:
Fax Number:
E-mail Address:

2. Project:
Date of Completion (if applicable):
Contact Person:
Company Name:
Address:
Telephone Number:
Fax Number:
E-mail Address:

3. Project:
Date of Completion (if applicable):
Contact Person:
Company Name:
Address:
Telephone Number:
Fax Number:
E-mail Address:

4. Project:
Date of Completion (if applicable):
Contact Person:
Company Name:
Address:
Telephone Number:
Fax Number:
E-mail Address:

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY

AUTHORIZATION FOR RELEASE OF FINANCIAL INFORMATION

This authorization will be used to obtain information to assist BJCTA in determining a potential contractor's financial responsibility. Your signature authorizes the release of financial information to the BJCTA Procurement Department for this purpose. All information must be current and traceable. Each venturer of a joint venture must submit a separate signed form.

This authorization form shall be submitted in accordance with the applicable provision(s) in Exhibit B, or as otherwise requested. BJCTA reserves the right to make additional inquiries based on information submitted, or the lack thereof.

Name of Bank/Financial Institution_____
Account Number_____
Address_____
Account Type: e.g., Savings, Checking, Other (Identify)_____
City, State, Zip Code_____
Name of Bank Officer Familiar with the Account_____
Telephone_____
Fax_____
Email Address_____
Name of Business_____
Address_____
City_____
State_____
Zip Code

I, individually and on behalf of the Business named above, do by my signature below, certify that the information provided is true and correct, and authorize the release of financial information for verification of financial responsibility. I understand that any false statements or misrepresentations regarding the Business named above may result in: 1) termination of any or all contracts which BJCTA has or may have with the business; 2) disqualification of the Business from consideration for contracts; 3) removal of the Business from BJCTA's bidders list; or/and 4) legal action(s) applicable under federal, state or local law.

Name: _____ Title: _____

Signature: _____ Date: _____
(Owner, CEO, President, Majority Stockholder, or Designated Representative)

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY



REQUEST FOR QUALIFICATIONS

Q-22-10-CG

**CONSTRUCTION MANAGEMENT SERVICES
CONSULTANT**

EXHIBIT O

SOLICITATION QUESTION SUBMISSION FORM

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY



REQUEST FOR QUALIFICATIONS

Q-22-10-CG

**CONSTRUCTION MANAGEMENT SERVICES
CONSULTANT**

EXHIBIT P

APPROPRIATE FISCAL YEAR LABOR RATES

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY

EXHIBIT P

APPROPRIATE FISCAL YEAR LABOR RATES

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY



REQUEST FOR QUALIFICATIONS

Q-22-10-CG

**CONSTRUCTION MANAGEMENT SERVICES
CONSULTANT**

EXHIBIT Q

APPROPRIATE FISCAL YEAR OVERHEAD RATES

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY

EXHIBIT Q

APPROPRIATE FISCAL YEAR OVERHEAD RATES

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY



REQUEST FOR QUALIFICATIONS

Q-22-10-CG

**CONSTRUCTION MANAGEMENT SERVICES
CONSULTANT**

EXHIBIT R

**APPROPRIATE FISCAL YEAR
SCHEDULE OF DELIVERABLES**

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY

EXHIBIT R

APPROPRIATE FISCAL YEAR SCHEDULE OF DELIVERABLES

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY



REQUEST FOR QUALIFICATIONS

Q-22-10-CG

**CONSTRUCTION MANAGEMENT SERVICES
CONSULTANT**

EXHIBIT T

MISCELLANEOUS EXPENSE POLICY

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY

EXHIBIT T

MISCELLANEOUS EXPENSE POLICY

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1. Non-reimbursable Costs

Non-reimbursable costs include charges for entertainment, first-class or business class airfare, alcoholic beverages, expenses for transportation for personal pursuits, gifts, flight insurance, traveler's checks and any other charges expressly disallowed under the terms of the Contract. See paragraph 5(a) for limitations on personal phone calls.

2. Pre-Approval for Seminars and Working Meals

The Authority's Procurement Official must approve in writing, and in advance of expenditure, all working meals and seminars.

3. Relocation

(a) Initial: Relocation costs, if applicable, are to be negotiated as an additional expense and will not exceed \$10,000, inclusive of all costs associated with the relocation. Relocation costs will only be paid for personnel jointly agreed to by the Procurement Official and Contractor. All costs associated with a relocation will be submitted within six (6) months of the move or receipt of the final invoice, whichever is earlier. The invoice to the Authority will be submitted as a summary (one time) invoice. If a relocated employee leaves the project within a year after the initial move, the total amount of the relocation expense must be reimbursed to the Authority. Once a person is acceptable to BJCTA to perform in a specific position, any transfer of the individual or filling of the vacant position will be considered by BJCTA to be at the convenience of the Contractor and no expenses allowed. If an individual is hired for a position necessitating accepting conditional or limited duration transfer, the Contractor will obtain BJCTA approval in writing for the limitations prior to initiating any transfer. Acceptance by BJCTA of the limitation will constitute acceptance of relocation of the individual to an equal distance upon completion of assignment and related Birmingham, Alabama expenses as well as relocation expenses of the replacement.

(b) Demobilization: The Contractor shall prepare and present to the Authority a transition plan to accommodate a reduction of services. The plan shall include a man-loaded schedule for phase down and shall designate key personnel subject to relocation. The transition plan will require BJCTA approval. Any person transferred as a result of the approved plan will be considered for demobilization. Personnel transferring from Birmingham, Alabama under the demobilization provisions of the transition plan will be expensed as follows:

- (1) If the person is reassigned directly to another project within the continental U.S., for which the Contractor is a prime or subcontractor, BJCTA will only pay for such relocation costs which are not allowed under the employee's new relocation package, and which would have been allowed by BJCTA relocation policies. Expenses of the individual for temporary living and housing at the new location will not be considered in determining the BJCTA share of the expenses.
- (2) If the person is returned to one of the Contractor's home offices with no project assignment, BJCTA will accept relocation costs for expenses in Birmingham, Alabama and in transit as defined by this paragraph, with no expenses at the home office location.
- (3) If the person is terminated in Birmingham, Alabama, no expenses for relocation will be accepted by BJCTA.
- (4) Under no circumstances will BJCTA accept demobilization expenses on any employee which exceed costs incurred by BJCTA on mobilization of that employee.

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY

EXHIBIT T

MISCELLANEOUS EXPENSE POLICY

4. Supplies, Materials, and Equipment

Such items used directly in support of this Contract shall be reimbursed at actual cost without fee and be supported by original receipts or legibly signed copies. Prior approval of the Procurement Official or a duly authorized representative is required to purchase items valued at \$500.00 or more. Acquisition of electronic hardware and software requires prior approval of the Procurement Official or his representative, regardless of dollar level. Contractors shall acquire all supplies, materials, and equipment competitively and should obtain at least three bids whenever possible.

5. Travel and Living Expenses

The Contractor shall be reimbursed the necessary, actual, and reasonable direct non-salary costs (expenses) applicable to the work included in this contract. All reimbursable expenses are defined below. The Authority's Procurement Official must approve in writing, and in advance of expenditure, all trips, and associated costs (including auto rentals). Recommend that companies issue credit cards to travelers. These would be available for paying airfare, hotel, automobile rental, airport parking, conference fees, cab rides and other miscellaneous travel expenses, as well as making reservations for hotel and auto rental.

(a) **Per Diem:** All travelers in overnight travel status and when such travel is in connection with the work requirements of the Contract will receive a per diem reimbursement based on the most current IRS Index for M&IE (Meals and Incidental Expenses) contained in IRS Publication 1542; plus \$10 for personal phone calls, tips, and other personal expenses. For cities not listed in the index, the closest city listed by the IRS shall be used. Receipts will not be required. The traveler will be reimbursed the full daily per diem for each 24-hour period based on their scheduled departure and arrival times from their home airport. Per diem for partial days spent out-of-town shall be made based on the following distribution table:

Distribution of Per Diem	Departure/Arrival Time
one-third	9:59 A.M. or earlier
one-third	10:00 A.M. to 3:00 P.M.
one-third	3:01 P.M. or later

Meal allowances (individual meal per diem) are not to be requested or reimbursed when another party pays for the meal. This includes any meals paid for by a BJCTA employee, contractor, or vendor; meals provided in the cost of the conference registration; etc. Reimbursement for meals applies only to the Contractor and/or members of their staff working on this Contract. Consultant's staff members for whom meals were provided shall be identified. Except as approved by the Procurement Official, payment of meals for other than Contractor's employees are not reimbursable. However, this provision excludes those meal costs incurred while in relocation status. For relocation expenses, see paragraph 3 above.

(b) **Hotel/Motel:** Expenses will be reimbursed at the actual and reasonable rate (single occupancy rate only) for Contractor personnel when in travel status for this Contract. Expenses incurred by a dependent or other person accompanying the Contractor's staff on an official business trip are expressly disallowed except during relocation. For such costs, see paragraph 3 above. The Contractor shall attempt to obtain the government rate if one is given. An actual signed copy of the invoice will support this expense. Bills indicating a multiple occupancy rate will be disallowed unless disclosure is made indicating reason, names, dates, and authorization. Travelers who will be in Birmingham, Alabama for more than one week should make hotel/motel arrangements in advance at long-term discounted rates that are satisfactory to the Procurement Official.

(c) **Air Travel:** Airfares will be reimbursed at the actual rates and must be supported by a ticket. Only coach or economy rates will be allowed. Business class travel for overseas airline travel is no longer authorized. Official travel shall be by the most direct routing. Use of joint airfare savings shall be obtained whenever possible.

(d) **Local Transportation:** When the Contractor's employees are on business travel connected with performance of this Contract, the following transportation guidelines shall apply:

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY

EXHIBIT T
MISCELLANEOUS EXPENSE POLICY

- (1) **Rental Automobiles:** Automobile rental will be allowed if approved in advance by the Authority's Procurement Official. Rentals shall be limited to a compact-sized vehicle, unless three or more travelers are sharing the same vehicle. However, car size should be based on the needs and the number of passengers using the vehicle. An SUV may be appropriate in certain weather or location situations and should be justified during the approval process. Parking expenses and toll fares will be reimbursed at the actual rate. Receipts will be required for these expenses.
- (2) **Taxi/shuttle/airport bus:** These expenses are reimbursable at actual costs and receipts are required when costs exceed \$25. Taxi usage should be kept to a minimum, using public transportation or shuttle/courtesy/shared transportation service, where feasible, especially to and from airports.
- (3) **Travel between work areas and airports** where Contractor's personnel utilize personal automobiles shall be reimbursed at the most current IRS rate per mile. Tolls and parking while traveling to and from commercial carriers are reimbursable at cost. Parking at the airport will be reimbursed as follows:
 - (i) Trips lasting 24 hours or less – Terminal parking;
 - (ii) Trips lasting more than 24 hours – Remote or off-site parking; however,
 - (iii) Parking costs should be compared to taxi service to ensure the most cost-effective mode is utilized.

BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY



REQUEST FOR QUALIFICATIONS

Q-22-10-CG

**CONSTRUCTION MANAGEMENT SERVICES
CONSULTANT**

EXHIBIT U

BUY AMERICA CERTIFICATE

Birmingham Jefferson County Transit Authority

EXHIBIT U

BUY AMERICA CERTIFICATE

BUY AMERICA CERTIFICATE (FEDERALLY ASSISTED CONTRACT)

INSTRUCTIONS

If the **OFFER PRICE EXCEEDS \$100,000**, **complete** the certificate and **submit it** with your offer.

SECTION (1) Complete **only** for **IRON, STEEL** or **MANUFACTURED PRODUCTS**. SECTION (2) Complete **only** for **ROLLING STOCK** and **ASSOCIATED EQUIPMENT**. SECTION (3) **SIGN** and **COMPLETE always**.

CAUTION: *Failure to return this form or to mark the appropriate ☐ in Section (1) **OR** Section (2) **AND complete the information** in Section (3), **including a signature**, may render your offer **nonresponsive** or **unacceptable**.*

DEFINITIONS: (Pursuant to 49 CFR 661)

ASSOCIATED EQUIPMENT: All components or subcomponents of Rolling Stock, including, but not limited to, train control, communication and traction power equipment, and as otherwise defined in 49 CFR 661.11.

IRON AND STEEL PRODUCTS: All construction materials made primarily of iron or steel and meant for use in infrastructure projects, including, but not limited to, structural iron or steel, iron or steel beams and columns, running rail and contact rail. This certification does not apply to iron or steel used as components or subcomponents of other manufactured products or rolling stock, or to metallurgic processes involving refinement of steel additives.

MANUFACTURED PRODUCT: An item produced as a result of processes to alter the form or function of materials or of elements of the product in a manner adding value and transforming those materials or elements so that they represent a new end product functionally different from that which would result from the mere assembly of elements or materials.

ROLLING STOCK: Transit vehicles, such as buses, vans, cars, railcars, locomotives, trolley cars and buses, and ferry boats, as well as, vehicles used for support services.□

Birmingham Jefferson County Transit Authority

EXHIBIT U

BUY AMERICA CERTIFICATE

BUY AMERICA CERTIFICATE

(FEDERALLY ASSISTED CONTRACT)

CERTIFICATE

SECTION (1); Certify only for IRON, STEEL or MANUFACTURED PRODUCTS: (Mark One)

- ☐ **CERTIFICATE OF COMPLIANCE WITH SECTION 165(a).** The offeror hereby certifies that it ***will comply*** with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations of 49 CFR Part 661;

--OR--

- ☐ **CERTIFICATE FOR NON-COMPLIANCE WITH SECTION 165(a).** The offeror hereby certifies that it ***cannot comply*** with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, but it ***may qualify for an exception*** to the requirement pursuant to Section 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 CFR Part 661.7.

SECTION (2); Certify only for ROLLING STOCK and ASSOCIATED EQUIPMENT: (Mark One)

- ☐ **CERTIFICATE OF COMPLIANCE WITH SECTION 165(b)(3).** The offeror hereby certifies that it ***will comply*** with the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations of 49 CFR Part 661.11;

--OR--

- ☐ **CERTIFICATE FOR NON-COMPLIANCE WITH SECTION 165(b)(3).** The offeror hereby certifies that it ***cannot comply*** with the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but it ***may qualify for an exception*** to the requirement consistent with Section 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 CFR Part 661.7.

SECTION (3); OFFEROR'S SIGNATURE: (Sign, Date and Enter Your Title and the Name of Your Company)

SIGNATURE_____
DATE_____
TITLE_____
NAME OF COMPANY