RESOLUTION 2016-109  PASSED: SEPTEMBER 26, 2016

AUTHORIZING A TRANSIT SERVICES PROVIDER AGREEMENT WITH THE VOLUNTARY ACTION CENTER OF DEKALB COUNTY TO PROVIDE TRANSIT SERVICES FOR THE DEKALB URBANIZED AREA FROM OCTOBER 1, 2016 THROUGH SEPTEMBER 30, 2017.

WHEREAS, the provision of public transit services is essential to the transportation of persons in the DeKalb urbanized area; and the Urbanized Area Formula Grant Program (Title 49 U.S.C. Section 5307) makes funds available to help offset certain operating deficits of a system providing public transit service in urbanized areas; and

WHEREAS, the Downstate Operating Assistance Program (DOAP) grant (30 ILCS 740/2-1) maintained by the Illinois Department of Transportation makes grant funds available annually to help offset certain operating deficits of a system providing public transit service in urbanized areas; and

WHEREAS, as the designated Section 5307 grant recipient for the DeKalb urbanized area, the City is required by the Federal Transit Administration to select a third-party transit provider through a Competitive Proposal/Request for Proposals (RFP) process; and

WHEREAS, the Voluntary Action Center of DeKalb County (VAC) presently provides demand-response transit services to the City of DeKalb, and is deemed to be best able to continue providing transit services to the DeKalb urbanized area during the period through which the RFP process is conducted; now

WHEREAS, the City Manager designated the current City Engineer to act as the DeKalb Sycamore Area Transportation Study (DSATS) Director and was approved by the DSATS Policy Committee at its February 26, 2014 meeting.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF DEKALB, ILLINOIS:

Section 1: That the Mayor of the City of DeKalb be authorized and directed to execute an agreement subject to such changes as shall be acceptable to him with the recommendation of staff, with Voluntary Action Center for the period of October 1, 2016 through September 30, 2017, with three additional renewable one year terms for service through September 30, 2020, for the continued operation of a demand-response transit system for the DeKalb urbanized area, a copy of which is attached hereto and made a part hereof as Exhibit "A".

Section 2: That the DSATS Director be authorized to approve all contractor reporting documents and other official documents related to the governance of the aforementioned agreement with VAC.
Section 3: That the City Clerk of the City of DeKalb, Illinois be authorized and directed to attest the Mayor's Signature and shall be effective thereupon.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a Regular meeting thereof held on the 26th day of September, 2016, and approved by me as Mayor on the same day. Passed by an 8-0 roll call vote. Aye: Jacobson, Finucane, Marquardt, Snow, Noreiko, Baker, Faivre, Rey.

ATTEST:

JENNIFER JEEP JOHNSON, City Clerk

JOHN A. REY, Mayor
TRANSIT SERVICES PROVIDER AGREEMENT

THIS AGREEMENT, by and between the City of DeKalb, hereinafter referred to as the "CITY" and the Voluntary Action Center of DeKalb County hereinafter referred to as the "CONTRACTOR", with the CITY and CONTRACTOR agreeing as follows

A. SERVICES

CONTRACTOR agrees to furnish to the CITY the outlined in the scope of services identified on Exhibit A of this document.

CONTRACTOR represents that it possesses the skills and knowledge necessary to provide all such services and understands that the CITY is relying upon such representation. CONTRACTOR further acknowledges that Exhibit A is an integral part of this Agreement and may not be modified except in accordance with a modification to the terms of this Agreement.

B. TERM

Services will be provided as needed and directed by the CITY beginning on the date of execution of this agreement and continuing until a term identified below. Upon termination the CONTRACTOR shall be compensated for all work performed for the CITY prior to termination and shall provide to the CITY all work completed through the date of termination. The CITY’s issuance of a notice of termination shall function as a stop work order, beyond which the CONTRACTOR shall not incur any additional costs without the CITY’s express, written permission.

1) EFFECTIVE DATE: The CITY hereby grants to CONTRACTOR the right to operate a transit system on behalf of the CITY from the 1st day of October, 2016 for a period through the 30th of September, 2017.
2) RENEWAL: Absent of termination by either party, the agreement will renew:
   a) On October 1, 2017 for the period through September 30, 2018;
   b) On October 1, 2018 for the period through September 30, 2019; and
   c) On October 1, 2019 for the period through September 30, 2020.
   d) The CITY reserves the right to require approval of any renewal by the City Council upon request of the Mayor, City Council, City Manager, or City Attorney.
3) TERMINATION:
   a) In the event the CONTRACTOR shall default in any of the material terms and provisions of this Agreement, the attached Scope of Services (see Exhibit 1), or if its performance of the transit services contemplated hereunder shall be determined inadequate, insufficient or improper, the CITY shall give the CONTRACTOR thirty (30) days written notification of such default, and shall have the right to terminate and cancel this Agreement by written notice should the CONTRACTOR not cure the default within 30 days of such notification.
   b) Standards for judging whether the CONTRACTOR’s service is adequate shall not include but not limited to such specific items as: ability to meet stated schedules of service, cleanliness of vehicles, courtesy of drivers, honesty in dealing with financial affairs, willingness to cooperate with a multi-provider system, and provision of monthly, quarterly, and annual reports in a timely manner.
   c) It is agreed that the CONTRACTOR shall have the right to terminate this Agreement upon giving sixty (60) days prior written notice to the CITY, except in the event that the CITY passes an ordinance regulating or taxing
CONTRACTOR, in which case, CONTRACTOR shall have the right to terminate this Agreement upon giving five (5) days prior written notice to the CITY.

d) **Termination for Convenience (Professional or Transit Service Contracts/Agreements)** The CITY may, at any time upon 30 days written notice to CONTRACTOR, may terminate this agreement, in whole or in part, when it is in the Government's interest. If this agreement is terminated, the Recipient shall be liable only for payment under the payment provisions of this agreement for services rendered before the effective date of termination. Said termination shall be without prejudice to any right or remedy of the CITY provided herein.

e) **Termination for Default (Transportation Services)** if the CONTRACTOR fails to perform the services within the time specified in this agreement or any extension or if the CONTRACTOR fails to comply with any other provisions of this agreement, the CITY may terminate this agreement for default. The CITY shall terminate by delivering to the CONTRACTOR a Notice of Termination specifying the nature of default. The CONTRACTOR will only be paid the agreement price for services performed in accordance with the manner of performance set forth in this agreement.

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

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

f) **Opportunity to Cure (General Provision)** The CITY in its sole discretion may, in the case of a termination for breach or default, allow the CONTRACTOR 10 days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

   i) If CONTRACTOR fails to remedy to CITY's satisfaction the breach or default of any of the terms, covenants, or conditions of this agreement within [ten (10) days] after receipt by CONTRACTOR of written notice from CITY setting forth the nature of said breach or default, CITY shall have the right to terminate the agreement without any further obligation to CONTRACTOR. Any such termination for default shall not in any way operate to preclude CITY from also pursuing all available remedies against CONTRACTOR and its sureties for said breach or default.

g) **Cost to Cure (General Provision)**

   i) If the CITY terminates the whole or any part of the work pursuant to this agreement, then the CITY may procure upon such terms and in such manner as the City Council may deem appropriate, supplies or services similar to those so terminated, and the CONTRACTOR shall be liable to the CITY for any excess costs for such similar supplies or services. The CONTRACTOR shall continue the performance of this agreement to the extent not terminated hereunder.

h) **Waiver of Remedies for any Breach** In the event that CITY elects to waive its remedies for any breach by CONTRACTOR of any covenant, term or condition of this agreement, such waiver by CITY shall not limit CITY's remedies for any
succeeding breach of that or of any other term, covenant, or condition of this agreement.

i) **Attorney's Fees**  
   i) Should the CONTRACTOR default pursuant to any of the provisions of this agreement, the CONTRACTOR and its surety shall pay to the CITY such reasonable attorney's fees as the CITY may expend as a result thereof and all costs, expenses, and filing fees incidental thereto.

j) **CONTRACTOR Responsibilities Under Termination**  
   i) After receipt of a notice of termination including the end of the agreed upon agreement period from the CITY and except as otherwise directed by the CITY designated contact person (hereinafter DESIGNEE) with the CONTRACTOR, the CONTRACTOR shall:
      (1) Stop work under the agreement on the date and to the extent specified in the notice of termination;
      (2) Place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the work under the agreement as is not terminated;
      (3) Terminate all orders and subcontracts to the extent that they relate to performance of work terminated by the notice of termination;
      (4) Assign to the CITY in the manner, at the times, and to the extend directed by THE DESIGNEE, all of the rights, title, and interest of the CONTRACTOR under the orders and subcontracts so terminated, in which case the CITY shall have the right, at its discretion, to settle or pay any and all claims arising out of the termination of such orders or subcontracts;
      (5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the DESIGNEE, to the extent the DESIGNEE may require, which approval or ratification shall be final for all purposes;
      (6) Use its best efforts to sell in the manner, at the times, to the extent, and at the prices directed or authorized by the DSATS Director, any property described in Section vi of this paragraph, provided, however, that the CONTRACTOR shall not be required to extend credit to any buyer and further provided that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the CITY to the CONTRACTOR pursuant to this agreement.
      (7) Complete performance of such part of the work as shall not have been terminated by the notice of termination;
      (8) Take such action as may be necessary, or as the DESIGNEE may direct, for the protection and preservation of the property related to the agreement which is in the possession of the CONTRACTOR and in which the CITY has or may acquire an interest.
      (9) Return all equipment and software belonging to the CITY in the manner, at the times and to the extent directed by the DESIGNEE and to return equipment in good working and mechanical condition, reasonable wear and tear excepted.

C. **TERMINATION OF AGREEMENT**

The CONTRACTOR shall adhere all regulations identified in the Exhibit 6: Federally Required and other Model Clauses in Section 21 "Termination."
D. SCOPE OF SERVICES

The CONTRACTOR shall provide transit services at a level of service identified in the attached Scope of Services (see Exhibit 1: Scope of Services) to the DeKalb urbanized area during a period beginning October 1, 2016 through September 30, 2017 and during any extensions of the term of this Agreement.

E. COST OF SERVICES

The CONTRACTOR shall agree to be reimbursed at the rate provided in Exhibit 2: Cost Form below. Methods and Procedures for payments, reimbursements, and changes in funding shall be governed by the rules and regulations identified in Exhibit 1: Scope of Services below.

F. CERTIFICATIONS AND INSURANCE

The CONTRACTOR certifies that it shall conform to all rules, regulations, and certifications as identified in Exhibit 4: Required Certifications and Exhibit 6: Federally Required and other Model Clauses below, and with all applicable laws, rules and regulations.

The CONTRACTOR has submitted proof of insurance as provided in Exhibit 5: Insurance Certifications below.

G. ADDITIONAL TERMS OR MODIFICATION

The terms of this agreement shall be further modified as provided on the attached Exhibits and the Agreement Documents. Except for those Exhibits, no additional terms are included as a part of this agreement. All prior understandings and agreements between the parties are merged into this agreement, and this agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties. The CITY reserves the right by written amendment to make changes in requirements, amount of work, or time schedule adjustments. The CONTRACTOR shall negotiate appropriate adjustments acceptable to both parties to accommodate any changes. The CITY may, at any time by written order, require the CONTRACTOR to stop all or part of the services required by this Agreement. Upon receipt of such an order, the CONTRACTOR shall immediately comply with its terms.

H. NOTICES

All notices required to be given under the terms of this License shall be given mail, addressed to the parties as follows:

For the CITY: For the VOLUNTARY ACTION CENTER:

CITY Manager Executive Director
CITY of DeKalb Voluntary Action Center
200 S. Fourth Street 1606 Bethany Road
DeKalb, IL 60115 Sycamore, IL 60178

Either of the parties may designate in writing from time to time substitute addresses or persons in connection with required notices.
I. SUBCONTRACTORS AND THIRD PARTIES

CONTRACTOR shall not assign or subcontract for the performance of any obligation under this Agreement, except with the express, written preapproval of the CITY, which consent may be withheld in the CITY’s sole and absolute discretion. Should CONTRACTOR assign any obligation arising under this Agreement with the consent of the CITY, the CONTRACTOR shall remain to be primarily liable to the CITY for the performance of the obligation in question, and further shall be liable for ensuring that the subcontractor(s) comply with all obligations arising under this Agreement as if the subcontractor(s) was/were the CONTRACTOR itself. Further, should CONTRACTOR request to assign the performance of any obligation arising hereunder to a subcontractor, CONTRACTOR expressly provides its consent to the CITY contracting directly with such proposed subcontractor (or another subcontractor acceptable to the CITY) for the performance of such work, and to the amendment of this Agreement to reduce the scope and cost accordingly.

Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall it inure to the benefit of any third party.

J. DOCUMENT CORRECTION / SUPPLEMENTS

CONTRACTOR agrees and acknowledges that the terms of the Agreement Documents shall be binding upon this Work, notwithstanding the failure of this Agreement or the actions of the CITY to the contrary. No act by the CITY (other than a written amendment to these Agreement Documents), including but not limited to payment of CONTRACTOR’s invoices, shall waive the CITY’s ability to later insist on strict compliance with the terms of these Agreement Documents. CONTRACTOR agrees and acknowledges that it shall execute corrected documents upon request by the CITY if any error or discrepancy is identified by the CITY, and shall provide certificates of insurance or other security required hereunder at any time, upon request of the CITY, notwithstanding the CITY’s failure to previously demand the same.

Agreed to this 26th day of September, 2016.

CITY of DeKalb

City Clerk

VOLUNTARY ACTION CENTER

Executive Director

(attest)
K. TO BE INCLUDED AT TIME OF AGREEMENT

Exhibit 1. Scope of Services
   • as transferred from Scope of Services in RFP DSATS-2016-02

Exhibit 2. Cost Form
   • as transferred from Appendix D in RFP DSATS-2016-02

Exhibit 3. Service Area
   • as transferred from Appendix B in RFP DSATS-2016-02

Exhibit 4. Required Certifications
   • as transferred from Appendix E in RFP DSATS-2016-02

Exhibit 5. Insurance Certifications
   • provided by CONTRACTOR

Exhibit 6. Federally Required and other Model Clauses
   • as transferred Appendix F in RFP DSATS-2016-02
EXHIBIT 1. SCOPE OF SERVICES

The scope of services outlined below shall be required of the transit operator firm selected to provide transit services to the CITY.

The CONTRACTOR shall agree to provide a demand-response transit service within Illinois in the City of DeKalb, the City of Sycamore, the Town of Cortland, and the surrounding urban environs.

Existing Transit Services

The CONTRACTOR shall be required to continue the existing public transit routes and services provided for the DeKalb Illinois urbanized area. This includes Route Deviation bus routes in the City of DeKalb, the City of Sycamore, and potentially to Kishwaukee College in Malta. There is also paratransit door-to-door service throughout the DeKalb urbanized area and Medical Transportation to major medical facilities throughout northern Illinois. Table 1 below provides an overview of the existing transit services. Table 2 below provides an overview of route statistics for 2015.

1) Ridership statistics as illustrated in Table 2 on page 8 below identifies the current ridership statistics for the DeKalb urbanized area. The CONTRACTOR shall be expected to provide comparable ridership, hours, and mileage on the starting day of agreement. CONTRACTOR will expect that service area and frequency of runs on current routes shall increase during the period of the agreement;

2) The CITY may add, subtract, or substitute routes, miles, and hours of operation. The rates per passenger, per mile, and/or per hour submitted with this proposal shall apply to any such modifications.

3) The service will be provided during each month of the year, with service to be managed to allow for uninterrupted service throughout the agreement year.

4) Commencing with the first day of the term of the Agreement and continuing through the duration thereof, the CONTRACTOR agrees to furnish full and complete management, supervisory and operational services that are reasonably required for the public transit services contemplated by this Agreement.

Table 1. Existing Bus Service

<table>
<thead>
<tr>
<th>Bus Route</th>
<th>Type of Service</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Circular City of DeKalb Bus Route</td>
<td>Route Deviation</td>
<td>The route begins at 7:00 AM and finishes at 9:00 PM Monday through Friday. The DeKalb Route has one-hour headway and operates a vehicle with a minimum capacity of 14 persons during non-peak hours and minimum of 22 during peak hours. Note that the DeKalb route is deviated route service, thus the alignment is approximate. Modifications of the existing route to improve timeliness and services may be proposed. Any modifications will be reviewed and approved by the affected municipalities and organizations and go through a public comment process.</td>
</tr>
</tbody>
</table>
Circular City of Sycamore Bus Route

Route Deviation

The route begins at 7:00 AM and finishes at 9:00 PM, Monday through Friday. The Sycamore route has one-hour headway and operates a vehicle with a minimum capacity of 14 persons during non-peak hours and minimum of 22 during peak hours. Note that the Sycamore route is deviated route service, thus the alignment is approximate. Modifications of the existing route to improve timeliness and services may be proposed. Any modifications will be reviewed and approved by the affected municipalities and organizations and go through a public comment process.

Kishwaukee College Bus Route

Route Deviation

The route operates from 7:00 am to 10:00 pm Monday through Friday. This is a subscription service negotiated between Kishwaukee College and the contractor of their choice. This route is eligible to receive Illinois Downstate Operating Assistance Program (DOAP) grant operating assistance funding via the CITY should Kishwaukee College award a service agreement to the CONTRACTOR. If the CONTRACTOR does provide this service, it shall agree to conform to all rules and regulations provided herein. Any proposal submitted shall include an indication whether or not the CONTRACTOR intends on negotiating with Kishwaukee College to provide this service.

Metro-DeKalb Paratransit Service

Door-to-Door

The CONTRACTOR shall be responsible for providing origin to destination demand response paratransit service. This service is currently provided by way of 17 regular routes. Routes are flexible in nature and change in response to who is riding on them. Hours of operation are 8 AM to 10:30 PM Monday-Friday. CONTRACTOR shall be responsible for all paratransit service within DeKalb urbanized area.

Metro-DeKalb Medical Trips Service

Door-to-Door

This is medical transportation that is provided to locations outside of DeKalb County. Hours of operation are typically Monday-Friday from 6 AM to 6 PM., however this is a demand-response service, and some evening/weekend service shall be accommodated. The current system provides up to 8 Medical Trip routes. Some days there may not be sufficient demand to provide all eight routes.

Table 2. 2015 DeKalb Urbanized Area Route Statistics

<table>
<thead>
<tr>
<th>Route</th>
<th>Service Days</th>
<th>Total Riders</th>
<th>Revenue Hours</th>
<th>Deadhead Hours</th>
<th>Service Hours</th>
<th>Revenue Miles</th>
<th>Deadhead Miles</th>
<th>Service Miles</th>
<th>Avg Riders / Day</th>
<th>Avg Riders / Rev Hr</th>
<th>Avg Riders / Rev Mile</th>
</tr>
</thead>
<tbody>
<tr>
<td>DeKalb Route</td>
<td>251</td>
<td>88,550</td>
<td>3,849.6</td>
<td>33.5</td>
<td>3,883.0</td>
<td>57,929.6</td>
<td>3,599.0</td>
<td>59,528.6</td>
<td>352.8</td>
<td>23.0</td>
<td>1.9</td>
</tr>
<tr>
<td>Sycamore Route</td>
<td>251</td>
<td>28,291</td>
<td>3,284.4</td>
<td>146.3</td>
<td>3,430.7</td>
<td>50,349.0</td>
<td>2,177.0</td>
<td>52,526.0</td>
<td>112.7</td>
<td>8.6</td>
<td>0.6</td>
</tr>
<tr>
<td>Kishwaukee Route</td>
<td>251</td>
<td>32,562</td>
<td>3,435.0</td>
<td>256.6</td>
<td>3,691.6</td>
<td>51,560.0</td>
<td>8,611.0</td>
<td>60,171.0</td>
<td>129.7</td>
<td>9.5</td>
<td>0.6</td>
</tr>
<tr>
<td>Paratransit</td>
<td>251</td>
<td>75,291</td>
<td>30,791.0</td>
<td>3,713.4</td>
<td>34,504.4</td>
<td>374,631.6</td>
<td>41,517.1</td>
<td>416,148.7</td>
<td>300.0</td>
<td>2.4</td>
<td>0.2</td>
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<tr>
<td>Medical Transit</td>
<td>251</td>
<td>8,094</td>
<td>10,935.5</td>
<td>1,506.2</td>
<td>12,442.8</td>
<td>301,474.5</td>
<td>28,434.9</td>
<td>329,909.4</td>
<td>32.2</td>
<td>0.7</td>
<td>0.0</td>
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<tr>
<td>Total</td>
<td>251</td>
<td>232,788</td>
<td>52,296.5</td>
<td>5,656.0</td>
<td>57,952.5</td>
<td>835,944.7</td>
<td>82,339.0</td>
<td>918,283.7</td>
<td>927.4</td>
<td>4.5</td>
<td>0.3</td>
</tr>
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</table>
Operational Services

The selected CONTRACTOR shall be expected to have extensive knowledge in public transit operations. The selected CONTRACTOR shall have a close working relationship with CITY staff and also work with the member organizations of DSATS.

Any submitted proposal shall demonstrate the firm’s ability to provide the following Operational Services:

SERVICES

1) CONTRACTOR shall supply all Transportation Operation including:
   a) Supervision of all transit personnel employed by the CONTRACTOR.
   b) Securing all insurance coverage required and handling all matters with insurance carriers (see Insurance on page 25 below).
   c) Direction and supervision of all accounting, bookkeeping, auditing, and purchasing related to this agreement and attached Service Plan in compliance with all regulations set forth by the CITY, the Illinois Department of Transportation (hereinafter IDOT), and the Federal Transit Administration (hereinafter FTA).

2) Schedule Operations including:
   a) Studying and recommending changes in operating schedules, headway frequencies, transfer methods, and other related transit operations.

3) Employee Selection, Safety and Training including:
   a) Direction and supervision of the selection of all transit personnel employed by the CONTRACTOR.
   b) Direction and supervision of said employees’ training, conforming, whenever possible, to the best practices set forth by IDOT and the FTA.
   c) Direction and supervision of safety programs, safety meetings, campaigns, and use of safety equipment for the CONTRACTOR’s personnel, conforming, whenever possible, to the best practices set forth by IDOT and the FTA.

4) Any other requirements set forth in the Transit Services RFP which are not explicitly identified here.

5) Ownership of Records and Documents / Confidential Information:
   a) CONTRACTOR agrees to keep and maintain all books and records and other recorded information required to comply with any applicable laws, including but not limited to the Prevailing Wage Act.
   b) CONTRACTOR agrees to keep such information confidential and not to disclose or disseminate the information to third parties without the consent of the CITY.
   c) CONTRACTOR further agrees to keep as confidential any information belonging or relating to the CITY which is of a confidential nature, including without limitation information which is proprietary, personal, required by law to be confidential, or relates to the business, operations, or accounts of the CITY.
   d) This confidentiality shall not apply to material or information, which would otherwise be subject to public disclosure through the freedom of information act or if already previously disclosed by a third party.
   e) CONTRACTOR acknowledges that the Freedom of Information Act, 5 ILCS 140/1 et seq. (the “Act”) places an obligation on the CITY to produce certain records that may be in the possession of CONTRACTOR.
   f) CONTRACTOR shall comply with the record retention and documentation requirements of the Local Records Act 50 ILCS 205/1 et seq. and the Act and shall maintain all records relating to this Agreement in compliance with the Local Records Retention Act and the Act (complying in all respects as if the CONTRACTOR was, in fact, the CITY).
g) CONTRACTOR shall review its records promptly and produce to the CITY within two business days of contact from the CITY the required documents responsive to a request under the Act.

h) If additional time is necessary to comply with the request, the CONTRACTOR may request the CITY to extend the time to do so, and the CITY will, if time and a basis for extension under the Act permits, consider such extensions.

i) The CONTRACTOR shall agree to give FTA, the Comptroller General of the United States, and IDOT, through any authorized representative, access to and the right to examine all records, books, papers or documents related to this agreement; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

j) Contractor shall comply with any and all Freedom of Information Act (FOIA) requests received by the City and any responsive timeline imposed by the City in accordance with applicable law. Contractor agrees and acknowledges that the City is subject to the provisions of FOIA and that it maintains records that may be responsive to FOIA requests and required to be produced under FOIA.

6) Governing Law
   a) This agreement shall be governed and construed in accordance with the laws of the State of Illinois (hereinafter STATE). Venue and jurisdiction for any legal action arising out of or related to this Agreement shall be exclusively fixed in the DeKalb County Circuit Court, DeKalb County, Illinois.

7) Independent Contractor
   a) CONTRACTOR shall have sole control over the manner and means of providing the work and services performed under this agreement.
   b) The CITY’s relationship to the CONTRACTOR under this agreement shall be that of an independent contractor.
   c) CONTRACTOR will not be considered an employee to the CITY for any purpose. The parties agree that the CONTRACTOR is exclusively responsible for the determination of what work is required to complete the tasks as outlined and for the means and methods of completing such work.
   d) The CITY’s compensation to CONTRACTOR shall be limited to that described in Financial Requirements on page 18, and the CITY shall not reimburse any expenses, provide any benefits, withhold any employment taxes or otherwise have a financial relationship with CONTRACTOR other than payment of the stated compensation.
   e) The CONTRACTOR shall be solely responsible for withholding of taxes, providing employee benefits, or otherwise complying with applicable laws relating to its employees or contractors.
   f) In the event that the CITY determines, in its sole discretion, that it is economically advantageous for the CITY to provide certain supplies or tools for use by CONTRACTOR in lieu of paying CONTRACTOR to provide the same, the CITY and CONTRACTOR agree that CONTRACTOR shall then utilize the CITY’s equipment or supplies according to its own determination of their best and appropriate use (see City Owned Vehicles and Equipment, on page 16 below).
   g) CONTRACTOR shall be responsible for its own personnel, training, instruction and related matters.
   h) CONTRACTOR shall be responsible for determining its sequence of performance for required work.
   i) CONTRACTOR’s work shall be evaluated by the CITY based upon the end result of such work.
j) CONTRACTOR shall be responsible for any expenses incurred by CONTRACTOR in the performance of its work, and shall not be authorized, expressly or impliedly, to obligate the CITY on any debt, contract, or other agreement whatsoever.

k) The CONTRACTOR acknowledges that neither it nor its personnel shall be acting as an employee or official representative of the CITY for purposes of being offered any protection or coverage under CITY insurance policies for tort immunity or other legal purposes.

8) Coordination of Services: As there are multiple transit service providers in the region, the CONTRACTOR shall be expected to coordinate services between all transit providers in the region every extent possible.

PERSONS WITH DISABILITIES

1) The CONTRACTOR shall conform to all then-current requirements of the Americans with Disabilities Act (hereinafter ADA) and the U.S. Department of Regulations pursuant thereto in the provision of service.

2) The CONTRACTOR shall ensure that no person, on the basis of disability, is denied access to transit services.

3) The CONTRACTOR shall transport all special needs clients, including persons with disabilities, provided the client uses a "common wheelchair" pursuant to the definition contained in the U.S. Department of Transportation (hereinafter USDOT) regulations (49 CFR part 37.3).

4) The CONTRACTOR shall use securement systems and any other safety means necessary to ensure that all common wheelchairs transported are properly secured.

5) The CONTRACTOR may contact the passenger or their representative and request to provide technical advice as to whether the device conforms to ADA guidelines.

6) If a mobility device does not meet common wheelchair guidelines, the CONTRACTOR may refuse to transport the device. The CONTRACTOR shall immediately notify the CITY in the event of a refusal of service due to non-common chair, and in its monthly report to the CITY, identify the passenger and non-conforming specification.

7) Pursuant to 49 CFR part 37, the CONTRACTOR may request, but cannot require, the passenger transfer from a non-common chair, to a chair provided by the CONTRACTOR for boarding/alighting. The CONTRACTOR may request, but cannot require, the passenger transfer from non-common or common wheelchair to a regular passenger seat for transit.

8) The CONTRACTOR shall be asked to provide ADA-Complementary paratransit in the event that the CITY or its partners initiate fixed route service.

9) CONTRACTOR shall provide an ADA compliance plan including public information materials describing all services provided; operating policies regarding ADA paratransit trips; performance reports including on-time pickups, denial rates, no-shows, etc.; procedures describing accessibility policies including stop announcements, lift use, etc. (this plan shall be submitted as part of RFP response).

TRIP RESERVATIONS AND SCHEDULING

1) Reservations for demand response trips will be accepted from 8:00 AM until 4:00 PM, Monday through Friday. The CONTRACTOR will schedule trips on a "next day" basis, meaning that a reservation placed any time prior to 4:00 PM the day before travel will be accepted.

2) The CONTRACTOR is not obligated to accept same day reservations. However, in the event of vehicle availability, and in consideration of adverse impacts on existing scheduled clients, the CONTRACTOR may periodically accept same day reservations if
there is system capacity and the same day trip will not unduly impact the travel time and schedule of existing clients.

3) Reservations will be accepted up to 30 days in advance of the day of requested travel. The CONTRACTOR shall be permitted to accept reservations more than 30 days in advance of the day of travel if, for example, scheduling software permits such practices or it is within the general business practices of the CONTRACTOR to do so.

4) In making reservations, patrons will be asked about special needs required for transit use (e.g. wheelchair, child restraint seats, etc.), and the CONTRACTOR shall ensure that a properly equipped vehicle is available to meet the patron's special needs at the time of reservation confirmation.

5) The CONTRACTOR will schedule demand response trips on a first-requested, first scheduled basis without regard to trip purpose priorities. The CONTRACTOR will keep the CITY informed of capacity concerns in demand response service provision.

6) The CONTRACTOR may negotiate pick-up times with a client whose trip request cannot be accommodated at the requested time.

7) To assist the CITY evaluate long-range service planning and to assure that services provided by the CITY is comparable to persons with disabilities as it is to persons without disabilities, the CONTRACTOR shall maintain written trip denial lists. The list shall include the name of the client, date and time of the trip request, disability status of the client, and the reason for the trip denial. A report showing these denials will be submitted to the CITY on a quarterly basis.

8) Subscription trips, or standing orders, are permissible. The CONTRACTOR will keep data and statistics on the extent of subscription trips and any adverse impact on scheduling that subscription trips may cause in the availability of services to casual use clients.

9) The CONTRACTOR shall not schedule trips or dispatch vehicles with standees. No standees shall be permitted on-board any system vehicles which are providing dedicated paratransit or medical transit services. For route deviation routes, standees shall only be permitted on system vehicles that have holding bars and other safety devices required to safely transport standees.

10) The CONTRACTOR shall provide computerized dispatching services which includes:
    a) Software shall be able to manage scheduled trips. Software shall also accommodate the management of unscheduled runs and trips;
    b) Software shall be able to manage Geographic Data;
    c) Software shall be able to track boardings and alightings either manually by driver on a computerized device or automatically by equipment; and
    d) Installed software and hardware shall be able to track real-time locations of all vehicles.

**DISPATCHING**

1) The CONTRACTOR shall maintain a base of operations at a CITY approved location for project administration, maintenance of system vehicles, and as the location for dispatching.

2) The CONTRACTOR will maintain two-way communication with all system vehicles.

3) Dispatching staff and vehicle operators shall be trained in radio communication protocols consistent with FCC and industry standards.

4) A driver's handbook shall be provided by the CONTRACTOR to each driver indicating specific road procedures, accident and incident procedures, and instruction to drivers on how to communicate no-shows, late pick-ups, and situations where a client must be entrusted to the care of a guardian and the designated guardian is not at home for the afternoon or return trip drop-off.
5) The handbook should also contain all needed information for drivers to operate any Mobile Data Computers and associated trip scheduling software to log all tour completion times, total number of passengers on each vehicle trip/tour, daily vehicle mileage, vehicle utilized, passengers (by name) transported, and fares collected and other pertinent information deemed necessary by the CITY. For any vehicle where there is no mobile data computer or the computer is inoperable, the driver should manually log all required information.

6) Each driver should have their own unique account that they shall logon and logoff from the mobile data computer each day. Should a driver be maintaining a manual log, the daily log should be signed by the driver that day.

7) The CONTRACTOR shall retain all written and electronic driver logs throughout the period of performance under this contract and shall permit the CITY to inspect these logs at any time.

ON-TIME PERFORMANCE

1) In order to be considered "on-time" in demand response door-to-door operations, a scheduled vehicle will be at the pickup point from between 5 minutes prior to 15 minutes after the scheduled pickup time promised to the client. Clients must be ready, therefore, throughout this 20-minute "ready" period.

2) The CONTRACTOR will maintain data on the percent of all trips in demand response door-to-door mode provided "on-time".

3) In the event that a client is not at the scheduled pickup point between the designated ready times, the driver shall be required to wait at least five (5) minutes before departing the location. Drivers shall radio dispatch and have dispatch call the client’s home (or other location) to attempt to verify the client’s plans to make the trip. In the event that a patron does not make their intent known to the driver within the five-minute period, the driver shall assume a no-show has occurred and the trip will be treated in accordance with the no-show policy. In the event that a driver reaches a no-show determination, the driver shall inform the dispatch staff of the no-show occurrence immediately.

4) For all route deviation lines, the route shall be considered "on-time" if it is not more than ten (10) minutes later than the posted schedule time. The CONTRACTOR will maintain data on the percent of all trips in route deviation mode provided “on-time” and how often a route was deviated to provide route deviation service.

5) The agreement shall provide an annual “on-time” performance report including the on-time performance for each mode, and frequency that route deviations are used on route deviation routes. This report should be provided at the end of each fiscal year. This information shall also be available on demand as requested.

COMPLAINTS

1) The CONTRACTOR and CITY staff shall implement a complaint/incident monitoring system within first month of the implementation of this agreement. This system should monitor all complaints, including but not limited to on-time performance, driver, Title VI, ADA, and Disadvantaged Business Enterprise complaints. The monitoring process should clearly identify the required monitoring duties of both the CITY and CONTRACTOR staffs.

2) In order for complaints to be considered valid, the name, address, and telephone number of the complaining party shall be provided. Generally, anonymous complaints will be dismissed; however, investigations may be warranted based upon anonymous complaints, at the complete discretion of the CONTRACTOR. The CITY and CONTRACTOR’s staff shall hold all complaints received in strict confidence.
3) The CONTRACTOR’s staff will investigate and resolve all complaints for which the CONTRACTOR is identified as the responsible investigator for services provided in the DeKalb Urbanized Area (UZA). A written response will be provided to the complaint. The written response will contain the following information as appropriate:
   a) A copy of the initial complaint;
   b) If the problem has been resolved, a description of the resolution;
   c) If the issue is still being investigated, an estimate of the additional time needed for further investigation;
   d) If the issue cannot be resolved, documentation shall be provided as to why the issue cannot be resolved;
   e) If the investigation reveals that the complaint has no merit, documentation shall be provided.
4) A record of complaints shall be maintained and submitted to the CITY mailed, emailed, or faxed to identify CITY staff on a quarterly basis and on demand as needed.
5) In the written response to the complainant, they should be notified that they have 10 days to submit a request to the CITY to review the CONTRACTORS resolution to the complaint. The CITY shall review the complaint and resolution and either uphold the resolution, or require the CONTRACTOR to take additional actions. A written response shall be submitted to both the complainant and the CONTRACTOR.
6) The CITY reserves the right to review all complaints and the CONTRACTORS resolution to the complaint and order additional actions at the CITY’s discretion. Actions to be taken shall be submitted to the CONTRACTOR as a written response.
7) Any Complaints received regarding Title VI issues of Race and Limited English Proficiency shall follow the guidelines set forth in the City of DeKalb Title VI Program (http://www.dsats.org/947/).

CONTRACTOR STAFF

1) General Manager
   a) The CONTRACTOR shall designate a General Manager who shall oversee the day-to-day operation of the service. This position shall be a full-time, 1.0 FTE position, within the CONTRACTOR’s organization.
   b) The CONTRACTOR shall be free to assign other non-project related duties to the General Manager during the person’s tenure on the project. These duties, however, shall be secondary to the principal role of managing this service and shall not interfere in any manner with the duties of managing the scope of services described herein.
   c) During periods of personal leave (e.g., vacation leave, sick leave, etc.), the CONTRACTOR shall designate other personnel who will perform the duties of the General Manager in the person’s absence.
   d) The General Manager shall also represent the CONTRACTOR on the DSATS Technical Advisory Committee. The General Manager or authorized alternative shall attend all Technical Advisory Committee meetings scheduled each year.
2) Dispatch and office staff:
   a) The CONTRACTOR shall supply a sufficient number of employees to staff the office at all required times and perform all necessary tasks associated with the service. The CONTRACTOR will be responsible for training these employees and making sure that all program policies and procedures are understood and followed.
   b) During all times when vehicles are on the road providing service under this contract, the CONTRACTOR will staff the office with at least one person trained to perform radio-dispatching functions, answer telephones, and respond to emergencies.
3) Driver Qualifications and Training
a) The CONTRACTOR agrees that it will not allow any person to drive a vehicle whose moral character is not of the highest level, or whose conduct might in any way expose any client to any impropriety of work or conduct whatsoever, nor shall the CONTRACTOR allow any person to drive a vehicle who is not at the time in a condition of mental and emotional stability.

b) The responsibility for hiring and discharging personnel in respect to all of the foregoing shall rest entirely upon the CONTRACTOR, and the CONTRACTOR agrees that it shall not enter into agreement or arrangement with any employees, persons, groups or organizations which may in any way interfere with the CONTRACTOR’s ability to comply with this requirement.

c) The selected CONTRACTOR shall screen all driver candidates to ensure that the following qualifications are met:
   i) No more than one (1) moving violation during the last three (3) years prior to application for this program;
   ii) No moving violations within the last 12 months;
   iii) If license has ever been suspended, applicant shall have five (5) subsequent years with no violations;
   iv) If license has ever been revoked, applicant shall not be eligible for employment;
   v) Under no condition will an applicant be accepted as a driver for this program if (1) the person has been convicted of a felony or (2) and/or has been convicted of a drug or alcohol offense.

d) Nothing in these Agreement Documents shall inhibit the CONTRACTOR’s right to negotiate alternative employment conditions.

e) All drivers shall receive the following initial training through programs approved by the CITY and show proof of successful completion of the following training:
   i) First Aid and CPR;
   ii) Passenger assistance techniques (PAT);
   iii) Blood borne pathogen/biohazard handling;
   iv) Behind the wheel (defensive driving) training—minimum 12 hours, including classroom instruction; and
   v) Sensitivity training - minimum 8 hours classroom and 4 hours "hands-on" (including passenger assistance, loading, and tie-down training).

f) Drivers will receive ongoing training in areas such as defensive driving, rider satisfaction, sensitivity training, etc. on a recurring basis.

g) Drivers shall be trained for FTA, IDOT, and CITY compliance for origin to destination service, including training on safety and security;

4) All staff employed by the CONTRACTOR in fulfilling this agreement shall be considered employees of the CONTRACTOR and not the agents, servants or employees of the CITY.

REPORTING REQUIREMENTS

1) The selected CONTRACTOR will be responsible for implementing a record keeping and reporting system. This system will be compliant with National Transit Database and IDOT reporting requirements. The CONTRACTOR will be responsible for providing any information required to the CITY. With permission of the CITY, the CONTRACTOR may file reports directly with the oversight agency, but will still need to provide copies to the CITY.

2) CONTRACTOR shall expected to submit various reports as requested by the CITY. Format of reports shall be defined upon agreement approval. These reports shall be able to be broken down by date ranges, bus routes, funding sources, vehicles, route
deviation, demand response, etc. The statistics maintained shall include, but not limited to:

a) Operating Statistics: operating days; one-way trips; total passengers; revenue, service, deadhead, and non-revenue hours; revenue, service, deadhead, and non-revenue miles; passengers per service hour, service miles per service hour, and passengers per service mile.
b) Passenger Statistics: riders, attendants, guests, no shows, cancelled trips, new customers, ambulatory and wheelchair customers; customer information including type of fare subsidy and mobility type; customer pick-up location and time; customer drop-off location and time; customer pay amount; number and nature of complaints; Trip denials to ADA certified individuals.
c) Vehicle Statistics: daily beginning and ending mileage; out-of-service info; driver; real-time location information; vehicle fare box income per day; total accidents.
d) Run Statistics: Bus Stop boardings & alightings; number of runs; average trip distance per rider.
e) Other Reporting Statistics that may be required by IDOT and the FTA.

3) The CONTRACTOR shall submit driver training schedules and preventative maintenance schedules.

4) CONTRACTOR shall agree to register with the National Transit Database (hereinafter NTD) and provide the required monthly and annual report information necessary to ensure FEDERAL Compliance. The CONTRACTOR shall also coordinate with the CITY staff to submit the CITY annual NTD reports;

CITY OWNED VEHICLES AND EQUIPMENT

1) All CITY owned transit related equipment may be made available for lease. The CONTRACTOR shall ensure all vehicles continue to meet the most recent version of the Federal Motor Vehicle Safety Standards and Regulations (FMVSS) rollover and Americans with Disabilities Act (hereinafter ADA) requirements and meet all standards required by FTA regulations.

2) As part of signed agreement a lease agreement shall be prepared for all CITY owned vehicles and equipment leased to the CONTRACTOR for the provision of public transit. The lease agreement shall include:
   a) Listing of all equipment being leased;
   b) Date of purchase of each leased item;
   c) Original cost of each leased item;
   d) Estimated useful life of each item;
   e) Policy of disposition once each leased item has surpassed its useful life; and
   f) Any additional information required by FEDERAL, STATE, and CITY officials.

3) The CONTRACTOR shall be responsible for maintenance on all CITY owned vehicles leased to CONTRACTOR for transit services. The maintenance of all fleet vehicles shall conform to the manufacture’s recommended maintenance schedule to maintain vehicle warranties. The maintenance shall be performed at a facility approved by the CITY. For vehicle repairs, which require specialized equipment not available in the CONTRACTOR’S maintenance facility, the CONTRACTOR shall sub-contract out services to a facility that conforms to all rules and regulations of the FTA and the STATE.

4) All CITY owned vehicles shall be maintained in accordance with the manufacturers recommended maintenance program. Maintenance personnel shall be Automotive Service Excellence (ASE) certified, or contract with an ASE qualified maintenance provider. All vehicles shall be kept in compliance with all FEDERAL, STATE, and local safety requirements during the term of the agreement;
5) Accurate records of all vehicle maintenance shall be kept and provided to the CITY on quarterly basis. Such records shall include a description of work performed, vehicles current mileage, person performed by, and any other relevant data. All records shall also be provided to any FTA or STATE representatives, including but not limited to IDOT, upon request;

6) All CITY owned equipment shall be maintained in accordance with the manufacturers recommended maintenance program. All equipment shall be kept in compliance with all FEDERAL, STATE, and local safety requirements during the term of the agreement;

7) The CONTRACTOR shall submit an annual report on all CITY owned equipment that identifies the current condition of the equipment, any service work performed on the equipment which indicates if any such service work was done under warranty.

8) CONTRACTOR shall develop a comprehensive maintenance plan including all applicable FTA and IDOT regulations (until new plan is approved, the existing maintenance plan approved by the CITY shall be in effect);

9) The CONTRACTOR and CITY staffs shall perform an annual inspection of all CITY owned vehicles and equipment.

**FEDERAL AND STATE REGULATIONS**

1) Incorporation of FTA terms: The following provisions include, in part, certain Standard Terms and Conditions required by IDOT, whether or not expressly set forth in the agreement provisions found herein. All contractual provisions required by IDOT and as set forth in the most current FTA Circular C 4220.1F (https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance), are hereby incorporated by reference. Anything to the contrary notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any CITY request that would cause the CITY to be in violation of the FTA terms and conditions. The CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation to those listed directly or by reference herein, as they may be amended or promulgated from this time during the term of this agreement. The CONTRACTOR’s failure to so comply shall constitute a material breach of this agreement.

2) In addition, the CONTRACTOR and any subcontractors shall adopt a drug-free policy as outlined in FTA and IDOT regulations. The purpose of this policy is to assure worker fitness for duty and to protect our employees, passengers, and the public from the risks posted by the misuse of alcohol and use of prohibited drugs.

3) This policy is also intended to comply with all applicable FEDERAL and STATE regulations governing workplace anti-drug and alcohol programs in the transit industry. The FTA of the USDOT has published 49 CFR Part 653 and part 654, as amended, that mandate urine drug testing and breath alcohol testing for safety-sensitive positions and prohibits performance of safety-sensitive functions when there is a positive test result. The USDOT has also published 49 CFR Part 40, as amended that sets standards for the collection and testing of urine and breath specimens. In addition, the FEDERAL government published 49 CFR Part 29, “The Drug-Free Workplace Act of 1988,” which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the FTA. This policy incorporates those requirements for safety-sensitive employees and other when so noted.

4) The CONTRACTOR and all subcontractors shall acknowledge and affirm that they shall comply with the provision of all applicable state and federal laws, including but not
limited to Section 2-105A of the Illinois Human Rights Act (see http://www.illinois.gov/dhr/Pages/default.aspx).

5) The CONTRACTOR shall comply with all other appropriate FEDERAL and FTA requirements as noted or inferred.
6) The CONTRACTOR shall comply with all STATE, IDOT, and DOAP requirements as noted or inferred.
7) The CONTRACTOR shall be an active participant in the FTA Triennial Review to ensure both the CONTRACTOR and the CITY are complying with all active regulations implemented by both the FTA and the STATE. The CONTRACTOR shall also be an active participant in any specialized program reviews which the FTA or STATE may conduct to ensure more in depth compliance with all required regulations.
8) The CONTRACTOR shall adopt the CITY Title VI Plan (http://www.dsats.org/521/Title-VI-Program) and adhere to all its regulations. This plan includes service standards, policies to handle all Title VI complaints, and a Limited English Proficiency plan as required by FTA regulations.
9) The CONTRACTOR shall adhere to all DSATS Public Participation Plan (http://www.dsats.org/501/Public-Participation-Plan-PPP) for public comment on fare increases, and major services reductions or modifications.
10) The CONTRACTOR shall implement a Half-Fare plan for seniors and disabled. Current policy does not charge seniors and disabled for ridership. Should CONTRACTOR wish to change this policy, it shall go through a public meeting and public comment process.
11) If CONTRACTOR provides any charter services, a supplemental plan shall be submitted to show how the charter portion of the business shall be completely separated from all transit provided as part of this agreement. The CONTRACTOR shall prove that any capital equipment or operating assistance purchased with FTA grant funds shall NEVER be used in the provision of Charter services.
12) If CONTRACTOR provides any school bus services, a plan shall be submitted to show it conforms to all FTA regulations as they relate to school bus service.
13) CONTRACTOR shall submit policy on how it handles Equal Employment Opportunity (EEO) complaints (this shall be submitted as part of agreement proposal).
14) All subcontractor contracts and agreements entered into by CONTRACTOR in support of the CITY agreement are subject to all FTA rules and regulations and must include all applicable clauses as identified in EXHIBIT 6. and as identified in the FTA Best Practices Procurement Manual (hereinafter BPPM) (https://www.transit.dot.gov/funding/procurement/best-practices-procurement-manual) and in the BPPM Federally Required and Other Model Clauses on the FTA website at: https://www.transit.dot.gov/funding/procurement/bppm-federally-required-and-other-model-clauses.

FINANCIAL REQUIREMENTS

1) The CITY reimburses the CONTRACTOR at a single rate for services provided based upon the number of service hours per vehicle provided during the invoice period. The CONTRACTOR is expected to identify this reimbursement rate based on the CONTRACTORS expected operating costs. The CONTRACTOR shall submit the proposed rate using the form provided in EXHIBIT 2.
   a) The CITY reserves the right review and negotiate the proposed rate during agreement negotiations with the selected CONTRACTOR. If the CITY exercises its option to renew the agreement for a subsequent year(s), CONTRACTOR’s charges shall be allowed to increase yearly based on the following requirements:
      i) Rate shall not to exceed the Consumer Price Index (CPI) increase for the previous twelve (12) months;
ii) CPI shall be based on Index for the Midwest Region for Urban Wage Earners and Clerical Workers (CPI-W) for the portion of the consumer Price Index for all items, as determined by the U.S. Department of Labor, Bureau of Labor Statistics (http://www.bls.gov/news.release/cpi.t06.htm);

iii) Regardless of CPI, the rate of increase per year shall not exceed 7% unless explicitly approved by the CITY in writing; and

iv) As required by state regulation, use of fuel containing ethanol gasoline is required in gasoline-powered vehicles.

b) The award of any agreement is contingent upon availability of funds received by the CITY pursuant to grants under Section 5307 Metro Public Transportation Operating Assistance Program and the STATE Downstate Operating Assistance Program (DOAP).

c) Reimbursement to the CONTRACTOR is limited to the maximum amount of 5307 transit grant funds and DOAP grant funds made available to the CITY over the life of the agreement, less the amount of federal or state transit funds required by the CITY to recoup its expenses associated with administering said grant or obligated by the CITY through other agreements. In the event that said funds are not made available from FEDERAL or IDOT grant funds, the CONTRACTOR shall not look to the CITY to recover any loss or cost incurred.

d) Payment of individual invoices shall not exceed the total amount of funds already received by the CITY from the 5307 and DOAP grant funds. Should payments for services provided be delayed due to delays in payment from grant sources, the CONTRACTOR shall be allowed to temporarily reduce services and/or increase fares until grant reimbursements are received.

e) Any changes in services or fares shall be approved by the CITY and include a public hearing conforming to the DSATS Public Participation Plan (http://www.dsats.org/501/Public-Participation-Plan-PPP), advertised in the local newspaper, with all required FTA clauses included.

f) The CITY Manager will set an estimate of the maximum agreement amount as of July 1 each year. The CONTRACTOR will be notified quarterly as to the balance of the agreement.

g) Should the FTA or IDOT identify any findings related to this agreement during the Triennial Review or any other reviews or audits, both the CITY and CONTRACTOR shall agree to modify this agreement to address any findings.

h) The CITY reserves the right to retain up to 20% of available grant funding for administrative costs. Under no circumstances shall the CITY have any obligation to CONTRACTOR in excess of the FTA or IDOT grant funds actually received by the CITY within a given fiscal year.

2) CONTRACTOR shall submit Financial Statements for the past three years as part of their RFP proposal. The CONTRACTOR shall then be expected to submit these statements annually.

3) CONTRACTOR shall submit a three (3) year Capital and Operating Financial Plan as part of their proposal. The CONTRACTOR and CITY staff shall work together to develop and update a five (5) year Capital and Operating Financial Plan.

4) CONTRACTOR shall be reimbursed monthly based on the number of Vehicle Service Hours provided that month. CONTRACTOR shall submit the Vehicle Service Hour rate (see EXHIBIT 2. below) for which the CONTRACTOR expects to be reimbursed as of October 1 of current year. In order to receive reimbursement, the CONTRACTOR and CITY agree to the following:

a) The CONTRACTOR agrees to submit all required information needed to submit the DOAP required quarterly and yearly reports to CITY staff; and
b) The CONTRACTOR shall hire an Auditor to perform their annual audit of their organization as it relates to this agreement and provide copy to the CITY;

c) The CONTRACTOR shall collect fares, tickets, vouchers and/or other authorized tender for travel and report such revenue to the CITY. Such fares constitute a portion of the local match and shall be retained by the CONTRACTOR for the provision of public transit.

d) The CONTRACTOR shall be responsible for billing individual insurance companies for eligible Medical trips and report such revenue to the CITY. Such reimbursements constitute a portion of the local match and shall be retained by the CONTRACTOR for the provision of public transit.

5) The CITY shall agree to provide payment to the CONTRACTOR following the end of each calendar month. Upon receipt of an itemized bill, including documented vehicle service hours provided.

a) The CITY will reimburse the CONTRACTOR for sixty-five percent (65%) of vehicle service hours provided during the invoice period. Reimbursement is subject to limit set in the IDOT DOAP agreement for the State Fiscal Year.

b) All payments will occur the day after the payment is approved at a CITY council meeting. The CONTRACTOR will be provided a list of check payment dates and the date an invoice shall be submitted in order to be paid on a certain date.

c) Supplemental payments using a portion of the DeKalb urbanized area FTA 5307 annual allocation of FEDERAL Operating Assistance may be negotiated as a supplement for local match costs. Use of these funds shall be approved by the CITY, the DSATS Policy Committee, and the FTA.

d) At the end of the STATE fiscal year, the CONTRACTOR shall submit a final annual DOAP operating cost report (DOAP 10-C) to the CITY. At the discretion of the CITY and availability of funds from the current DOAP agreement, the CONTRACTOR may be reimbursed for allowed operating costs not funded by the monthly payment based on vehicle service hours. Should the monthly service hour payments exceed the final annual DOAP 10-C report expenditures, CONTRACTOR shall be expected to refund the CITY for any overpayment of services.

6) The CITY shall only provide payment upon receipt of DOAP grant fund payments received from the STATE to cover invoice requests. Should STATE funds become unavailable, CONTRACTOR shall rely on funds from other sources until such time additional funds are received from the STATE under the following conditions:

a) The CONTRACTOR may seek to increase fare revenue and/or reduce levels of service in order to continue services. The CONTRACTOR shall provide a written request and justification for the cost decreases or service reductions to the CITY.

b) Upon receipt of funds, the CITY agrees to pay all remaining invoices, up to the amount received from the STATE, within five (5) business days of receipt of funds.

c) Any reduction in services or other cost cutting measures shall be approved by affected communities and subject to the public involvement procedures for changes in service that satisfy the program-of-project requirements of the FTA Section 5307 Program and subject to the DSATS Public Involvement Participation Plan regulations (http://www.dsats.org/501/Public-Participation-Plan-PPP).

7) The CITY may use a portion of its allocation of Annual FTA 5307 Urbanized Area funds for Capital and Operating Assistance for the improvement of transit services provided by the CONTRACTOR in the urbanized area.

a) When requesting the CITY to submit an FTA grant project for capital projects or operating assistance funds which benefit the CONTRACTOR, the CONTRACTOR shall provide for each project a cost/benefit analysis, independent cost estimates, and any other information required by FTA for procurement purchases.
8) TAXES: The CITY is exempt from Federal Excise Tax and the Illinois Retailer’s Occupation Tax. Accordingly, by submitting a proposal, the CONTRACTOR acknowledges and affirms that the proposal does not include any amounts designated for those taxes. The CITY shall not assume any liability for any FEDERAL, STATE, or municipal taxes.

SAFETY AND SECURITY

1) CONTRACTOR shall provide CITY staff with all necessary documentation supporting security expenditures.
2) CONTRACTOR shall have a Drug-free workplace policy which conforms to all FTA rules and regulations (this shall be submitted as part of agreement proposal).
3) CONTRACTOR shall have a Drug and Alcohol Program which conforms to all FTA rules and regulations (this shall be submitted as part of agreement proposal).

DISADVANTAGED BUSINESS ENTERPRISES

1) This agreement shall have an initial subcontractor Disadvantaged Business Enterprise (DBE) goal of 1.46%.
2) The CONTRACTOR shall conform to all FTA DBE requirements (see 28. Disadvantaged Business Enterprise (DBE) on page 67 below).
3) Procedures to handle any Disadvantaged Business Enterprise (DBE) complaints which may be received by CONTRACTOR (until new DBE plan is approved, the existing DBE plan developed by the CITY shall be in effect);
4) The CONTRACTOR shall have a subcontractor Disadvantaged Business Enterprise (DBE) Goal at the same DBE Goal rate as the CITY’s. As of July 1, 2016, the current CITY Overall DBE Goal is 1.46%. CONTRACTOR shall conform to all FEDERAL, STATE, and local regulations as they pertain to DBE payments. In order to comply with DBE regulations CONTRACTOR shall provide the following:
   a) Identification of all DBE Subcontractors and contact information;
   b) Copy of any relevant contracts or agreements with DBE Subcontractor firms;
   c) Estimated annual payments to DBE Subcontractor; and
   d) Submittal of DBE Subcontractor Invoices and proof of payment by CONTRACTOR.

OTHER REQUIREMENTS

Certifications

The CONTRACTOR shall be responsible for identifying all such applicable regulations and certifications, and for compliance with the same, including but not limited to:

1) Sexual Harassment: The CONTRACTOR certifies that it is in compliance with the Illinois Human Rights Act 775 ILCS 5/1.101, et seq. including establishment and maintenance of sexual harassment policies and program (see Civil Rights Certification on page 34 below).
2) Tax Delinquency: The CONTRACTOR certifies that it is not delinquent in payment of any taxes to the Illinois Department of Revenue in accordance with 65 ILCS 5/11-42.1, and is not delinquent in the payment of any tax, charge or obligation to the CITY.
3) Employment Status: The CONTRACTOR certifies that if any of its personnel are an employee of the State of Illinois, they have permission from their employer to perform the service.
4) Anti-Bribery: The CONTRACTOR certifies it is not barred under 30 Illinois Compiled Statutes 500/50-5(a) - (d) from contracting as a result of a conviction for or admission
of bribery or attempted bribery of an officer or employee of the State of Illinois or any other state.

5) Loan Default: If the CONTRACTOR is an individual, the CONTRACTOR certifies that he/she is not in default for a period of six months or more in an amount of $600 or more on the repayment of any educational loan guaranteed by the Illinois State Scholarship Commission made by an Illinois institution of higher education or any other loan made from public funds for the purpose of financing higher education (5 ILCS 385/3).

6) Felony Certification: The CONTRACTOR certifies that it is not barred pursuant to 30 ILCS 500/50-10 from conducting business with the State of Illinois or any agency as a result of being convicted of a felony.

7) Barred from Contracting: The CONTRACTOR certifies that it has not been barred from contracting as a result of a conviction for bid-rigging or bid rotating under 720 ILCS 5/33E-3 (Bid Rigging) or 720 ILCS 5/33-4 (Bid Rotating) or a similar law of another state or of the federal government. (see Certification of Participants Regarding Debarment, Suspension, and Other Ineligibility and Voluntary Exclusion on page 33 below)

8) Prevailing Wage: The CONTRACTOR certifies that it shall comply with all applicable provisions of the Prevailing Wage Act, and further certifies that it is not in violation of said Act and has not been barred from submitting on this proposal by virtue of a past violation of the Act. The CONTRACTOR is responsible for regularly updating said list as new prevailing wage rates are made available by the CITY or by the Illinois Department of Labor. The Illinois Department of Labor posts regular updates to prevailing wage rates on its official website, which is currently www.illinois.gov/idol.

In the event that this is a public works project as defined under the Prevailing Wage Act, Proposer agrees to comply with the Substance Abuse Prevention on Public Works Projects Acts, 820 ILCS 265/1 et. seq., and further agrees that all of its subcontractors shall comply with such Act. As required by the Act, CONTRACTOR agrees that it will file with the CITY, prior to commencing work, its written substance abuse prevention program and/or that of its subcontractor(s) which meet or exceed the requirements of the Act.

9) Drug Free Workplace: The CONTRACTOR certifies that it is in compliance with the Drug Free Workplace Act (30 Illinois Compiled Statutes 580) as of the effective date of this agreement. The Drug Free Workplace Act requires, in part, that CONTRACTORs, with 25 or more employees certify and agree to take steps to ensure a drug free workplace by informing employees of the dangers of drug abuse, of the availability of any treatment or assistance program, of prohibited activities and of sanctions that will be imposed for violations; and that individuals with contracts or agreements certify that they will not engage in the manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the agreement. The CONTRACTOR further certifies that it maintains a substance-abuse program and provide drug testing in accordance with 820 ILCS 130/11G, Public Act 095-0635. The CONTRACTOR shall also comply with the Federal Highway Administrative Rules on Controlled Substances and Alcohol Use and Testing, 49 CFR Parts 40 and 382 and that all of CONTRACTOR’s drivers are currently participating in a drug and alcohol testing program pursuant to the Rules.

10) Responsible CONTRACTOR Requirements: The CONTRACTOR certifies that it complies with the Illinois Procurement Code and the provisions of Section 30-22 thereof relating to apprenticeship and training, if applicable. The CONTRACTOR
further certifies for work that will be performed by subcontract that each of its subcontractors submitted for approval either is in compliance or will begin participation in an approved apprenticeship and training program prior to commencing any Work. The Illinois Department of Labor, at any time before or after award, may require production of a copy of each applicable Certificate of Registration issued by the United States Department of Labor evidencing such participation by the CONTRACTOR and all of its Subcontractors. Applicable apprenticeship and training programs are those that have been approved or registered with the United States Department of Labor. The CONTRACTOR shall provide to the CITY, upon request, copies of all Certificates of Registration, and copies of all work or craft job category included in the Work, along with such other records as the CITY may require. Any records or logs required to be provided by law shall be provided by the CONTRACTOR, without requiring a request from the CITY.

11) Non-Discrimination, Certification, and Equal Employment Opportunity: The CONTRACTOR agrees to comply with applicable provisions of the Illinois Human Rights Act (775 Illinois Compiled Statutes 5), the U.S. Civil Rights Act, the Americans with Disabilities Act, Section 504 of the U.S. Rehabilitation Act and the rules applicable to each. The equal opportunity clause of Section 750.10 of the Illinois Department of Human Rights Rules is specifically incorporated herein. The CONTRACTOR shall comply with Executive Order 11246, entitled Equal Employment Opportunity, as amended by Executive Order 11375, and as supplemented by U.S. Department of Labor regulations (41 C.F.R. Chapter 60). The CONTRACTOR agrees to incorporate this clause into all subcontracts under this Agreement. The CONTRACTOR acknowledges that neither it nor the CITY shall discriminate on the basis of any protected classification.

12) Record Retention and Audits: If 30 ILCS 500/20-65 requires the CONTRACTOR (and any subcontractors) to maintain, for a period of 3 years after the later of the date of completion of this Agreement or the date of final payment under the Agreement, all books and records relating to the performance of the Agreement and necessary to support amounts charged to the CITY under the Agreement. The Agreement and all books and records related to the Agreement shall be available for review and audit by the CITY and the Illinois Auditor General. If this Agreement is funded from grant funds provided by the U.S. Government, the Agreement, books, and records shall be available for review and audit by the Comptroller General of the U.S. and/or the Inspector General of the federal sponsoring agency. The CONTRACTOR agrees to cooperate fully with any audit and to provide full access to all relevant materials.

13) United States Resident Certification: (This certification shall be included in all contracts or agreements involving personal services by non-resident aliens and foreign entities in accordance with requirements imposed by the Internal Revenue Services for withholding and reporting federal income taxes.) The CONTRACTOR certifies that he/she/it is a: ___ United States Citizen or Corporation ___ Resident Alien ___ Non-Resident Alien. The Internal Revenue Service requires that taxes be withheld on payments made to non-resident aliens for the performance of personal services at the rate of 30%.

14) Tax Payer Certification (to be provided prior to approval of agreement): Under penalties of perjury, the CONTRACTOR certifies that its Federal Tax Payer Identification Number or Social Security Number is 36-2798257 and is doing business as a (check one): ___ Individual ___ Real Estate Agent ___ Sole Proprietorship ___ Government Entity ___ Partnership ___ Tax Exempt
Authorization (IRC 501(a) only) ___ Corporation  x___ Not for Profit Corporation  
___ Trust or Estate ___ Medical and Health Care Services Provider Corp.

15) Authorized in Illinois: The CONTRACTOR that it is authorized to lawfully transact 
business in the State of Illinois, under all applicable Illinois laws and regulations. The  
CONTRACTOR certifies that it shall comply with the Corporate Accountability for Tax 
Administration Act, 20 ILCS 715/1, et. seq. Where applicable, the CONTRACTOR 
certifies that it is not barred from proposing by virtue of having been adjudicated to 
have committed a willful or knowing violation of Section 42 of the Environmental 
Protection Act within the five years preceding this proposal, pursuant to 415 ILCS 
5/1, et. seq. The CONTRACTOR further certifies that it is in compliance with all 
applicable requirements of the Business Enterprise for Minorities, Females and 
Persons with Disabilities Act, 30 ILCS 575/1, et. seq.

16) Export Administration, Supplies, Labor: The CONTRACTOR certifies that neither it 
nor any substantially owned affiliate is participating, nor shall participate, in an 
international boycott which is in violation of the provisions of the US Export 
Administration Act of 1979 or the regulations of the US Department of Commerce 
promulgated under the Act, including but not limited to the requirements of 30 ILCS 
582/5. The CONTRACTOR further certifies that no foreign made equipment, 
materials or supplies furnished under the proposal or agreement have been or will be 
produced in whole or in part by forced labor, convict labor, or indentured labor, nor 
made in whole or in part by the labor of any child under the age of 12, under penal 
sanction pursuant to 30 ILCS 583/1 and 30 ILCS 584/1. The CONTRACTOR 
certifies that steel products used or supplied in the performance of a agreement for 
public works shall be manufactured or produced in the United States, unless the 
CITY Manager grants an exception to said requirement, pursuant to 30 ILCS 565/1, 
et. seq.

17) General Compliance and Certification: The CONTRACTOR certifies that it has and 
will comply with all other applicable laws, regulations, ordinances or restrictions 
applicable to any component of the proposing process, agreement, or any services 
or materials provided in connection therewith. The CONTRACTOR acknowledges 
that it is responsible for identifying and complying with all applicable laws, 
ordinances, rules and regulations, and that it shall indemnify and hold harmless the 
CITY from any claim, liability or damages arising out of the failure to identify or 
comply with any such applicable legal restriction. The CITY reserves the right to 
reject any proposal, cancel any agreement or pursue any other legal remedy 
deemed necessary should it become aware of any violation of any laws, ordinances, ules or regulations on the part of the CONTRACTOR or any subcontractor.

18) OSHA Standards: The CONTRACTOR certifies that it will identify and comply with 
all requirements and standards imposed by the Occupational Safety and Health Act. 
All guards and protectors, all appropriate markings, and all other protections shall be 
in place prior to delivery of any item, and at all times during performance of any 
Work.

19) CERCLA Indemnification: The CONTRACTOR certifies that it shall, to the maximum 
extent permitted by law, indemnify, defend and hold harmless the CITY, and CITY 
Indemnitees from and against any and all liability, including without limitation, costs 
of response, removal, remediation, investigation, property damage, personal injury, 
damage to natural resources, health assessments, health settlements, attorneys’ 
fees, and other related transaction costs arising under the Comprehensive 
seq., as amended from time to time, and all other applicable statutes, regulations,
ordinances, and under common law for any release or threatened release of the waste material collected by the CONTRACTOR both before and after its disposal.

20) **Buy America:** The CONTRACTOR certifies that shall conform to all FEDERAL Buy America requirements as identified in 2. Buy America Requirements on page 46 below.

21) **Collusion:** The CONTRACTOR certifies that it is not colluding with any other party or person in the preparation or submittal of this Agreement.

**Indemnification**

1) CONTRACTOR shall indemnify and hold harmless the IDOT, FTA, CITY and CITY’s agents, servants, and employees, all DSATS member agencies and their representatives on the DSATS committees, except representatives on the committees which are staff of the CONTRACTOR, against all loss, damage, taxes, liabilities, charges or expense, including but not limited to attorney’s fees and court costs, which the CITY may sustain or for which it may become liable on account of injury to or death of persons, or on account of damage to or destruction of property resulting from the performance of work under this agreement by CONTRACTOR or its Subcontractors, due to or arising in any manner from the intentional or wrongful act or negligence of CONTRACTOR or its Subcontractors of any employee of any of them, or otherwise arising out of this Agreement or the CONTRACTOR’s performance of services on behalf of the CITY.

2) The CONTRACTOR shall be responsible for any and all damages to property or persons arising out of an error, omission, and/or negligent act in the prosecution of the work or failure to prosecute the work and shall indemnify and hold harmless the CITY, its officers, agents, and employees from all suits, claims, actions or damages of any nature whatsoever resulting therefrom. The Company shall assume all restitution and repair costs arising out of an error, omission, and/or negligence.

3) The CONTRACTOR shall purchase and maintain continuously, throughout the term of the agreement, insurance coverage meeting all the following requirements.

**Insurance**

The CONTRACTOR shall purchase and maintain continuously, throughout the term of the agreement, insurance coverage meeting all the following requirements.

1) All CONTRACTORS and All Contracts/Agreements:
   a) CONTRACTOR shall provide any and all insurance required under any applicable law, regulation, statute, or ordinance, including but not limited to workers’ compensation insurance, unemployment insurance, automobile liability insurance, and other legally required insurance.
   b) CONTRACTOR shall produce a certificate evidencing current coverage, upon request from the CITY. CONTRACTOR shall indemnify and hold harmless the CITY from any and all liability, damage, cost or expense which the CITY may incur or be liable to pay as a result of any and all accidental injuries or damages suffered by the Consultant or its employees (in addition to any other required indemnification or insurance from Consultant).
   c) Certificates and General Conditions:
      i) Unless otherwise indicated herein, any certificate of insurance shall further indicate that the CITY is additional primary insured on such policy of insurance, shall indicate that such policies shall not have any right of subrogation against the CITY or the CITY’s insurers, and shall indicate that said policy shall not be
cancelled or revoked except after the provision of not less than 30-day notice to the CITY.

ii) CONTRACTOR shall maintain said policy in full force and effect for the duration of this Agreement, and shall periodically provide updated certificates of insurance to evidence continuing coverage in compliance herewith.

iii) For purposes of this Agreement and insurance provided hereunder, the “CITY” shall include the City of DeKalb, its employees, appointed and elected officers, its committees, its attorneys, and all corporate bodies that exist as a subsidiary to the CITY, DSATS Staff, DSATS TAC Members, DSATS PC members, and DSATS subcommittee members.

2) Comprehensive General Liability Coverage Requirements.
   a) CONTRACTOR shall also be required to provide the CITY with a Certificate of Insurance, in a form and from an issuer acceptable to the CITY, indicating that the CONTRACTOR has obtained and maintains comprehensive general liability insurance with policy limits of not less than:
      i) One Million Dollars ($1,000,000.00) per person; and
      ii) Two Million Dollars ($2,000,000.00) per occurrence.
   iii) This insurance shall include independent contractors’ protective liability, products and completed operations broad form property damage coverage. The completed operations and products liability coverage shall be maintained for at least two years after final payment. The coverage shall also include contractual liability insurance coverage for the CONTRACTOR’s obligations to indemnify and hold harmless the CITY and the CITY Indemnitees.

3) Vehicle Insurance Coverage:
   a) CONTRACTOR shall also be required to provide the CITY with a Certificate of Insurance, in a form and from an issuer acceptable to the CITY, indicating that the CONTRACTOR has obtained and maintains comprehensive automobile liability insurance with policy limits of not less than:
      i) One Million Dollars ($1,000,000.00) per person; and
      ii) Two Million Dollars ($2,000,000.00) per occurrence.
   iii) This policy shall include coverage for all owned, hired, and non-owned vehicles used in furtherance of this Agreement.
   b) The Provider agrees that it shall maintain or cause to be maintained, for the duration of the Agreement, such policies of insurance as shall protect the Provider, the CITY, the Department, the FEDERAL Government, and the FTA. The Provider shall be responsible for the payment of any deductibles required by the insurance policies.
   c) The CITY reserves the right to increase vehicle coverages at any time it deems the coverage necessary.

4) Indemnification.
   a) The policy limits, availability or unavailability of insurance coverage or the applicability of claims, defenses or limitations based upon applicable law (including but not limited to the Illinois Worker’s Compensation Act or similar laws or statutes) shall in no way limit the CONTRACTOR’s obligation to indemnify and hold harmless the CITY from any claims for damage, liabilities or other costs arising out of or relating to the CONTRACTOR’s work or this Agreement.

5) Additional Insurance Requirements.
   a) EACH CERTIFICATE OF LIABILITY INSURANCE SHALL REFERENCE THE SPECIFIC RFP NUMBER AND PROJECT DESCRIPTION IN THE ADDITIONAL INSURED FIELD, AND SHALL BE PROVIDED DIRECTLY TO THE CITY REPRESENTATIVE.
b) Each of the above coverages shall be written by a company with a minimum rating of “A” by the Best’s Insurance Rating Guide. All coverages shall be written by companies that are admitted, licenses carriers in the STATE.

c) The CITY, the STATE, and the FEDERAL governments, its agents, DSATS staff, DSATS TAC members, DSATS PC members, and other DSATS subcommittee members shall be named as an Additional Insured on each of the above policies.

d) A Certificate of Insurance evidencing the required coverages and this Additional Insured Endorsement shall be furnished to the CITY prior to the first day of service. Such insurance shall be cancelable or modifiable only on written notice by registered mail to the CITY at least thirty (30) days in advance of any changes. The CITY reserves the right to require the CONTRACTOR to furnish a copy of its insurance policy for examination prior to the first day of service.
## EXHIBIT 2. COST FORM

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost per Service Hour</th>
<th>*Anticipated Annual Service Hours</th>
<th>Annual Service Cost</th>
<th>Estimated Variable Costs</th>
<th>Total Contract</th>
</tr>
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<tbody>
<tr>
<td>Anticipated Service Hour Cost for all Transit - Year 1</td>
<td>$70.00</td>
<td>60,000</td>
<td>$4,200,000.00</td>
<td></td>
<td>$4,200,000.00</td>
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<tr>
<td>Anticipated Transition Costs</td>
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<td></td>
<td></td>
<td></td>
<td>$0.00</td>
</tr>
<tr>
<td>Anticipated Service Hour Cost for all Transit - Year 2</td>
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<td>$4,495,000.00</td>
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<tr>
<td>Anticipated Service Hour Cost for all Transit - Year 3</td>
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<td>65,000</td>
<td>$4,875,000.00</td>
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<td>$4,875,000.00</td>
</tr>
<tr>
<td>Anticipated Service Hour Cost for all Transit - Year 4</td>
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<td>66,000</td>
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<td>$5,131,500.00</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>253,000</td>
<td>$18,701,500.00</td>
<td>0</td>
<td>$18,701,500.00</td>
</tr>
</tbody>
</table>

*The Cost per Service Hour shall be calculated for all public transit provided. It is expected that any expansion of service shall increase the total Annual Service Hours but the cost per service hour shall remain the same. We estimate around 18 hours a day with an estimated 252 days per year based on current service hours. Final payments shall be reimbursed on actual hours and costs, not estimated.
EXHIBIT 3. SERVICE AREA

DeKalb Region Transit Routes and Stops

Legend
- Transit Stops

Transit Routes
- Green: DeKalb Line
- Red: Kishwaukee Line
- Blue: Sycamore Line

Distance Scale: 0 to 2 Miles
EXHIBIT 4. REQUIRED CERTIFICATIONS

All Certifications below shall be filled out and signed by the CONTRACTOR and included in the firm’s submittal.

Each Certification shall be made available on the RFP website (http://www.dsatso.org/957/4924/Transit-Services-RFP) in Excel Spreadsheet format for easier input.
NON-COLLUSION CERTIFICATION

TO: City of DeKalb, DeKalb, IL

I hereby certify that I am the person responsible within my firm for the final decision as to the price(s) and amount of this proposal or, if not, that I have written authorization, enclosed herewith, from that person to make the statements set forth below on his or her behalf and on behalf of my firm.

I further attest that:

1) The price(s) and amount of this proposal have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition with any other contractor, proposer, or potential proposer.

2) Neither the price(s) nor the amount of this proposal has been disclosed to any other firm or person who is a proposer or potential proposer on this project, and will not be so disclosed prior to proposal opening.

3) No attempt has been made or will be made to solicit, cause, or induce any firm or person to refrain from proposing on this project, or to submit a proposal higher than the proposal of this firm, or any intentionally high or non-competitive proposal or other form or complementary proposal.

4) This proposal of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary proposal.

5) My firm has not offered or entered into a subcontract or agreement regarding the purchase of materials or services from any firm or person, or offered, promised or paid cash or anything of value to any firm or person, whether in connection with this or any other project, in consideration for an agreement or promise by any firm or person to refrain from proposing or to submit a complementary proposal on this project.

6) My firm has not accepted or been promised any subcontract or agreement regarding the sale of materials or services to any firm or person, and has not been promised or paid cash or anything of value by any firm or person, whether in connection with this or any other project, in consideration for my firm’s submitting a complementary proposal, or agreeing to do so, on this project.

7) I have made a diligent inquiry of all members, officers, employees, and agents of my firm with responsibilities relating to the preparation, approval or submission of my firm’s proposal on this project and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in this affidavit.

Date: 09/12/2016

Signature: [Signature]

Printed Name: Ellen Rogers

Title: Executive Director

Business Name: Voluntary Action Center of DeKalb County

Doing business as: ( ) Individual ( ) Partnership (x ) Corporation ( ) other
ANTI-LOBBYING CERTIFICATION

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

No FEDERAL appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any FEDERAL contract or agreement, the making of any FEDERAL grant, the making of any FEDERAL loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any FEDERAL contract, grant, loan, or cooperative agreement.

1) If any funds other than FEDERAL appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this FEDERAL contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)

2) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and Contracts/Agreements under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

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

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

The CONTRACTOR certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the CONTRACTOR understands and agrees that the provisions of 31 U.S.C.A 3801, et seq., apply to this certification and disclosure, if any.

Date: 09/12/2016

Signature: [Signature]

Printed Name: Ellen Rogers

Title: Executive Director

Business Name: Voluntary Action Center of DeKalb County
CERTIFICATION OF PARTICIPANTS REGARDING DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION

The Participant (a potential sub-grantee or sub-recipient under an FTA project, a potential third party CONTRACTOR, or a potential subcontractor under a major third party CONTRACTOR), certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any FEDERAL department or agency.

If the Participant (a potential sub-grantee or sub-recipient under an FTA project, a potential third party CONTRACTOR, or a potential subcontractor under a major third party contract/agreement) is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this proposal.


[Signature]
Signature of Authorized Official

[Title]
Title of Authorized Official

[Date]
09/12/2016
CIVIL RIGHTS CERTIFICATION

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shorten the lengthy text.

Civil Rights - The following requirements apply to the underlying agreement:

1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and FEDERAL transit law at 49 U.S.C. § 5332, the CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the CONTRACTOR agrees to comply with applicable FEDERAL implementing regulations and other implementing requirements FTA may issue.

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

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

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

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

3) The CONTRACTOR also agrees to include these requirements in each subcontract financed in whole or in part with FEDERAL assistance provided by FTA, modified only if necessary to identify the affected parties.
CERTIFICATION AS A DISADVANTAGED BUSINESS ENTERPRISE (DBE) AND/OR SMALL BUSINESS

The CITY / DSATS highly encourages DBE and small business firms to participate in all federal and state funded transportation projects in the DSATS planning region either as a Prime CONTRACTOR or Subcontractor. Any firm participating in the RFP claiming DBE or Small Business Status shall provide documentation to verify their status.
DBE FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

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

- [ ] The offer is a registered DBE and is identified as a certified DBE in the Illinois UCP (100% of this project performed by offer and funded by CITY FTA 5303/5307 grant funds shall be assigned to the DSATS DBE goal). (Provide a copy of the offerors Uniform Certification Application)

  If registered as DBE in another State or on SAM.gov, please identified where registered: This template was created using the artwork from the Daily Chronicle and then the template created by the Public Works Department.

  (Provide a copy of the offerors approved DBE application from identified source)

For Agreements where a DBE subcontracting goal is required:

- [ ] The offeror is committed to a minimum of 1.24% DBE utilization on this contract (if CONTRACTOR is a registered DBE, their work performed can be considered as part of the DBE goal).

- [ ] The offeror (if unable to meet the DBE goal of 1.24%) is committed to a minimum of This template was created using the artwork from the Daily Chronicle and then the template created by the Public Works Department % DBE utilization on this contract and shall submit documentation demonstrating good faith efforts in seeking DBE participation.

Name of offeror's firm: City of DeKalb

DUNS No. This template was created using the artwork from the Daily Chronicle and then the template created by the Public Works Department: 168674634

By: [Signature]  Ellen Rogers  

Executive Director  

Title
DBE FORM 2: LETTER OF INTENT

Name of offeror's firm: Voluntary Action Center

Address: 1600 Bethany Rd

City: Sycamore, State: IL, Zip: 60178

Name of DBE firm: West Fuels, Inc

Address: 82 S. La Grange Rd #201

City: La Grange, State: IL, Zip: 60525

Telephone: 708-588-1400, Email:

Type of DBE Firm:

<table>
<thead>
<tr>
<th>Ownership by Gender:</th>
<th>Ownership by Ethnicity:</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Male Owned</td>
<td>□ African American Owned</td>
</tr>
<tr>
<td>□ Female Owned</td>
<td>□ Hispanic American Owned</td>
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<tr>
<td></td>
<td>□ Native American Owned</td>
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<td></td>
<td>□ Subcontinent Asian American Owned</td>
</tr>
<tr>
<td></td>
<td>□ Non-Minority Owned</td>
</tr>
</tbody>
</table>

Description of work to be performed by DBE firm:

Fuel

The offeror is committed to utilizing the above-named DBE firm for the work described above estimated dollar value of this work is $1,000,000.

Affirmation

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

By: [Signature] [Signature]

Title

38
If the offeror does not receive award of the prime contract/agreement, any and all representations in this Letter of Intent and Affirmation shall be null and void.

(Submit this page for each DBE subcontractor.)

**SMALL BUSINESS FORM 1: SMALL BUSINESS CERTIFICATION**

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

<table>
<thead>
<tr>
<th>(Please Check)</th>
<th>The offer has an active registration in the System for Award Management (SAM) online registrant database for the U.S. Federal Government (note: registration on the SAM is required to be considered in this IFB/RFP).</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The SAM has determined the offer qualifies as a small business under the following NAICS codes:</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>For Contracts/Agreements for which a small business participation goal has not been set (check applicable):</td>
</tr>
<tr>
<td></td>
<td>Please check the appropriate category (only one) for small business participation in this proposal:</td>
</tr>
<tr>
<td></td>
<td>□ The offer is performing all activities identified in the scope of work in-house and <strong>IS NOT</strong> identified as a small business in the SAM.</td>
</tr>
<tr>
<td></td>
<td>□ The offer is performing all activities identified in the scope of work in-house <strong>IS</strong> identified as a small business in the SAM.</td>
</tr>
<tr>
<td></td>
<td>□ The offer is subcontracting some activities and there is a _____% small business utilization on this proposal.</td>
</tr>
<tr>
<td></td>
<td>□ The offer is subcontracting some activities, however, there is no small business utilization on this proposal.</td>
</tr>
</tbody>
</table>

Name of offeror's firm: *Voluntary Action Center*

DUNS No. 168874634

By *Signature*  ______________________  Executive Director

Title  ______________________
SMALL BUSINESS FORM 2: LETTER OF INTENT

Name of Offeror's firm: __________________________

Address: ______________________________________

City: __________________________ State: _____ Zip: _____________

Name of Small Business Firm: ________________________________

DUNS # of Small Business Firm: ______________________________

Registered NAICS Codes: ________________________________

Address: ______________________________________

City: __________________________ State: _____ Zip: _____________

Telephone: _______________ Email: _______________________

Annual Average Gross Receipts: $_______________

Annual Average Employment: _________________

Type of Small Business Firm:

☐ SBA Certified 8A Program Participant
☐ SBA Certified HUB Zone Firm
☐ SBA Certified Small Disadvantaged Business

☐ Self-Certified Small Disadvantaged Business
☐ Service Disabled Veteran Owned
☐ AbilityOne (formerly JWOD) Non-Profit Agency

☐ Veteran Owned Business
☐ Woman Owned Business
☐ Women-Owned Small Business (WOSB)

☐ Economically Disadvantaged Women-Owned Small Business (EDWOSB)
Description of work to be performed by small business firm:

________________________________________________________________________

________________________________________________________________________

The offeror is committed to utilizing the above-named small business firm for the work described above. Estimated dollar value of this work is $ ___________________.

**Affirmation**

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

By: ________________________________________ ___________________________
    (Signature)      Title

If the offeror does not receive award of the prime contract/agreement, any and all representations in this Letter of Intent and Affirmation shall be null and void.

    (Submit this page for each DBE subcontractor and for offeror also, if a registered small business.)
EXHIBIT 5. INSURANCE CERTIFICATIONS
EXHIBIT 6. FEDERALLY REQUIRED AND OTHER MODEL CLAUSES

FTA Revision Date: March 16, 2016

Appendix F contains all the FTA clauses that need to be included in all contracts for which FTA grant funds are used. Please note that any subcontractor contracts that the CONTRACTOR initiates must include all applicable clauses identified herein. Clauses not applicable to this agreement have been removed for brevity sake. Please note, however, that any subcontractor contracts that are applicable to transit services for the CITY must contain all applicable FTA required clauses. The full list of clauses can be found at:


Table of Contents (Appendix A - Governing Documents)

A.1 - Federally Required and Other Model Contract/Agreement Clauses

1. Fly America Requirements
2. Buy America Requirements
3. Charter Bus and School Bus Requirements (applicable only if CONTRACTOR provides)
4. Energy Conservation Requirements
5. Clean Water Requirements
6. Bus Testing (only applicable if CONTRACTOR purchases buses)
7. Pre-Award and Post Delivery Audit Requirements (only applicable if CONTRACTOR purchases buses)
8. Lobbying
9. Access to Records and Reports
10. Federal Changes
11. Clean Air
12. Recycled Products
13. Davis-Bacon and Copeland Anti-Kickback Acts (not applicable to CONTRACTOR – may be applicable with certain subcontractor contracts)
14. Contract Work Hours and Safety Standards Act (not applicable to CONTRACTOR – may be applicable with certain subcontractor contracts)
15. No Government Obligation to Third Parties
16. Program Fraud and False or Fraudulent Statements and Related Acts
17. Termination
18. Government-wide Debarment and Suspension (Nonprocurement)
19. Privacy Act
20. Civil Rights Requirements
21. Breaches and Dispute Resolution
22. Transit Employee Protective Agreements
23. Disadvantaged Business Enterprises (DBE)
24. Incorporation of Federal Transit Administration (FTA) Terms
25. Drug and Alcohol Testing
1. FLY AMERICA REQUIREMENTS

49 U.S.C. §40118

41 CFR Part 301-10

Applicability to Contracts/Agreements

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the USDOT has determined meets the requirements of the Fly America Act.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under $3,000. These requirements do not apply to micro-purchases.

Flow Down Requirements

The Fly America requirements flow down from FTA recipients and subrecipients to first tier CONTRACTORs, who are responsible for ensuring that lower tier CONTRACTORs and subcontractors are in compliance.

Clause

Fly America Requirements - 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 Part 301-10, which provide that recipients and subrecipients of FEDERAL funds and their CONTRACTORs are required to use U.S. Flag air carriers 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. The CONTRACTOR agrees to include the requirements of this section in all subcontracts that may involve international air transportation.
2. BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)

49 CFR Part 661

Applicability to Contracts/Agreements

The Buy America requirements apply to the following types of Contracts/Agreements: Construction Contracts/Agreements and Acquisition of Goods or Rolling Stock (valued at more than $100,000).

Flow Down

The Buy America requirements flow down from FTA recipients and subrecipients to first tier CONTRACTORs, who are responsible for ensuring that lower tier CONTRACTORs and subcontractors are in compliance. The $100,000 threshold applies only to the grantee contract, subcontracts under that amount are subject to Buy America.

Clause

Buy America - The CONTRACTOR agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that FEDERAL funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j) (2) (C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A CONTRACTOR or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all offers on FTA-funded contracts/agreements, except those subject to a general waiver. Offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.
Certification requirement for procurement of buses, other rolling stock, and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j) (2) (C).

The CONTRACTOR or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j) (2) (C) and the regulations at 49 C.F.R. Part 661.11 when appropriate.

Date __________ 09/12/2016

Signature __________

Company Name __________ Voluntary Action Center of DeKalb County

Title __________ Executive Director
Certificate of Non-Compliance with 49 U.S.C. 5323(j) (2) (C)

The CONTRACTOR or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j) (2) (C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j) (2) (A), 5323(j) (2) (B), or 5323(j) (2) (D), and 49 C.F.R. 661.17.

Date __________ 09/12/2016 __________

Signature ______________________________________________________

Company Name __________ Voluntary Action Center of DeKalb County __________

Title __________ Executive Director __________
3. CHARTER BUS REQUIREMENTS

49 U.S.C. 5323(d)
49 CFR Part 604

Applicability to Contracts/Agreements

The Charter Bus requirements apply to the following type of contract: Operational Service Contracts/Agreements.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under $3,000. These requirements do not apply to micro-purchases.

Flow Down Requirements

The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service CONTRACTORs.

Clause

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

3. SCHOOL BUS REQUIREMENTS

49 U.S.C. 5323(F)
49 CFR Part 605

Applicability to Contracts/Agreements

The School Bus requirements apply to the following type of contract: Operational Service Contracts/Agreements.

Flow Down Requirements

The School Bus requirements flow down from FTA recipients and subrecipients to first tier service CONTRACTORs.

Clause

School Bus Operations - Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.
6. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.
49 CFR Part 18

Applicability to Contracts/Agreements

The Energy Conservation requirements are applicable to all Contracts/Agreements.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under $3,000. These requirements do not apply to micro-purchases.

Flow Down

The Energy Conservation requirements extend to all third party CONTRACTORs and their Contracts/Agreements at every tier and subrecipients and their subagreements at every tier.

Clause

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

7. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

Applicability to Contracts/Agreements

The Clean Water requirements apply to each contract and subcontract which exceeds $100,000.

Flow Down

The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

Clause

Clean Water - (1) The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The CONTRACTOR agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The CONTRACTOR also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with FEDERAL assistance provided by FTA.
10. LOBBYING

31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

Applicability to Contracts/Agreements

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey Contracts/Agreements.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under $3,000. These requirements do not apply to micro-purchases.

Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Clause

- Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.
- Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]
- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that CONTRACTORs file the certification required by 49 CFR Part 20, Appendix A.
- Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.
11. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325
18 CFR 18.36 (I)
49 CFR 633.17

Applicability to Contracts/Agreements (both CONTRACTOR and Subcontractor)

<table>
<thead>
<tr>
<th>Contract Characteristics</th>
<th>Contract/Agreement</th>
<th>Operational Service Contract / Agreement</th>
<th>Acquisition of Rolling Stock</th>
<th>Professional Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. State Grantees</td>
<td>a. Contracts/Agreements below SAT ($100,000)</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td>b. Contracts/Agreements above $100,000/ Capital Projects</td>
<td>None unless non-competitive award¹</td>
<td>None unless non-competitive award</td>
<td>None unless non-competitive award</td>
</tr>
<tr>
<td>II. Non State Grantees</td>
<td>a. Contracts/Agreements below SAT ($100,000)</td>
<td>Yes²</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>b. Contracts/Agreements above $100,000/Capital Projects</td>
<td>Yes³</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under $3,000. These requirements do not apply to micro-purchases.

Flow Down

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

Clause

1) Access to Records - The following access to records requirements apply to this Agreement:
2) Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the CONTRACTOR agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the CONTRACTOR which are directly pertinent to this agreement for the purposes of making audits, examinations, excerpts and transcriptions. CONTRACTOR also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO CONTRACTOR access to CONTRACTOR's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

Sources of Authority

¹ 49 USC 5325 (a)
² 18 CFR 18.36 (i)
³ 18 CFR 18.36 (i)
3) Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, CONTRACTOR agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO CONTRACTOR, access to the CONTRACTOR's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts/agreements of less than the simplified acquisition threshold currently set at $100,000.

4) Where the Purchaser enters into a negotiated contract/agreement for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, CONTRACTOR agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the CONTRACTOR which are directly pertinent to this agreement for the purposes of making audits, examinations, excerpts and transcriptions.

5) Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract/agreement for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the CONTRACTOR shall make available records related to the contract/agreement to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

6) The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

7) The CONTRACTOR agrees to maintain all books, records, accounts and reports required under this agreement for a period of not less than three 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 CONTRACTOR agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i) (11).

8) FTA does not require the inclusion of these requirements in subcontracts.
12. FEDERAL CHANGES

49 CFR Part 18

Applicability to Contracts/Agreements
The FEDERAL Changes requirement applies to all Contracts/Agreements.

Applicability to Micro-Purchases
Micro-purchases are defined as those purchases under $3,000. These requirements do not apply to micro-purchases.

Flow Down
The FEDERAL Changes requirement flows down appropriately to each applicable changed requirement.

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

14. CLEAN AIR

42 U.S.C. 7401 ET seq
40 CFR 15.61
49 CFR Part 18

Applicability to Contracts/Agreements
The Clean Air requirements apply to all Contracts/Agreements exceeding $100,000, including indefinite quantities where the amount is expected to exceed $100,000 in any year.

Flow Down
The Clean Air requirements flow down to all subcontracts which exceed $100,000.

Clauses
Clean Air - (1) The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The CONTRACTOR agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The CONTRACTOR also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with FEDERAL assistance provided by FTA.
15. RECYCLED PRODUCTS

42 U.S.C. 6962
40 CFR Part 247
Executive Order 12873

Applicability to Contracts/Agreements

The Recycled Products requirements apply to all Contracts/Agreements for items designated by the EPA, when the purchaser or CONTRACTOR procures $10,000 or more of one of these items during the fiscal year, or has procured $10,000 or more of such items in the previous fiscal year, using FEDERAL funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases $10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was $10,000.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under $3,000. These requirements do not apply to micro-purchases.

Flow Down

These requirements flow down to all to all CONTRACTOR and subcontractor tiers.

Clause

Recovered Materials - The CONTRACTOR agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.
19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts/Agreements
Applicable to all Contracts/Agreements.

Applicability to Micro-Purchases
Micro-purchases are defined as those purchases under $3,000. These requirements do not apply to micro-purchases.

Flow Down
Not required by statute or regulation for either primary CONTRACTORs or subcontractors, this concept should flow down to all levels to clarify, to all parties to the agreement, that the FEDERAL Government does not have contractual liability to third parties, absent specific written consent.

Clause

No Obligation by the Federal Government.

1) The Purchaser and CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the FEDERAL Government in or approval of the solicitation or award of the underlying 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 the Purchaser, CONTRACTOR, or any other party (whether or not a party to that agreement) pertaining to any matter resulting from the underlying agreement.

2) The CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with FEDERAL assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.
20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq.
49 U.S.C. 5307

Applicability to Contracts/Agreements

These requirements are applicable to all Contracts/Agreements.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under $3,000. These requirements do not apply to micro-purchases.

Flow Down

These requirements flow down to CONTRACTORs and subcontractors who make, present, or submit covered claims and statements.

Clause

Program Fraud and False or Fraudulent Statements or Related Acts.

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

2) The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the FEDERAL Government under a contract/agreement connected with a project that is financed in whole or in part with FEDERAL assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the CONTRACTOR, to the extent the FEDERAL Government deems appropriate.

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

49 U.S.C. Part 18
FTA Circular 4220.1F

Applicability to Contracts/Agreements

All Contracts/Agreements (with the exception of Contracts/Agreements with nonprofit organizations and institutions of higher education,) in excess of $10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For Contracts/Agreements with nonprofit organizations and institutions of higher education the threshold is $100,000.) In addition, such Contracts/Agreements shall describe conditions under which the agreement may be terminated for default as well as conditions where the agreement may be terminated because of circumstances beyond the control of the CONTRACTOR.

Flow Down

The termination requirements flow down to all Contracts/Agreements in excess of $10,000, with the exception of Contracts/Agreements with nonprofit organizations and institutions of higher learning.

Clause

1) Termination for Convenience (Professional or Transit Service Contracts/Agreements) The CITY may, at any time upon 30 days written notice to CONTRACTOR, may terminate this agreement, in whole or in part, when it is in the Government's interest. If this agreement is terminated, the Recipient shall be liable only for payment under the payment provisions of this agreement for services rendered before the effective date of termination. Said termination shall be without prejudice to any right or remedy of the CITY provided herein.

2) Termination for Default (Transportation Services) if the CONTRACTOR fails to perform the services within the time specified in this agreement or any extension or if the CONTRACTOR fails to comply with any other provisions of this agreement, the CITY may terminate this agreement for default. The CITY shall terminate by delivering to the CONTRACTOR a Notice of Termination specifying the nature of default. The CONTRACTOR will only be paid the agreement price for services performed in accordance with the manner of performance set forth in this agreement.
   a) If this agreement is terminated while the CONTRACTOR has possession of Recipient goods, the CONTRACTOR shall, upon direction of the CITY, protect, and preserve the goods until surrendered to the CITY or its agent. The CONTRACTOR and CITY shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.
   b) If, after termination for failure to fulfill agreement obligations, it is determined that the CONTRACTOR was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the CITY.

3) Opportunity to Cure (General Provision) The CITY in its sole discretion may, in the case of a termination for breach or default, allow the CONTRACTOR [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions
   a) If CONTRACTOR fails to remedy to CITY's satisfaction the breach or default of any of the terms, covenants, or conditions of this agreement within [ten (10) days] after receipt by CONTRACTOR of written notice from CITY setting forth the nature of said breach or default, CITY shall have the right to terminate the agreement without any further obligation to CONTRACTOR. Any such termination for default shall not in any way
operate to preclude CITY from also pursuing all available remedies against CONTRACTOR and its sureties for said breach or default.

4) **Cost to Cure (General Provision)**
   a) If the CITY terminates the whole or any part of the work pursuant to this agreement, then the CITY may procure upon such terms and in such manner as the City Council may deem appropriate, supplies or services similar to those so terminated, and the CONTRACTOR shall be liable to the CITY for any excess costs for such similar supplies or services. The CONTRACTOR shall continue the performance of this agreement to the extent not terminated hereunder.

5) **Waiver of Remedies for any Breach** In the event that CITY elects to waive its remedies for any breach by CONTRACTOR of any covenant, term or condition of this agreement, such waiver by CITY shall not limit CITY’s remedies for any succeeding breach of that or of any other term, covenant, or condition of this agreement.

6) **Attorney’s Fees**
   a) Should the CONTRACTOR default pursuant to any of the provisions of this agreement, the CONTRACTOR and its surety shall pay to the CITY such reasonable attorney’s fees as the CITY may expend as a result thereof and all costs, expenses, and filing fees incidental thereto.

7) **CONTRACTOR Responsibilities Under Termination**
   a) After receipt of a notice of termination including the end of the agreed upon agreement period from the CITY and except as otherwise directed by the CITY designated contact person (hereinafter DESIGNEE) with the CONTRACTOR, the CONTRACTOR shall:
      i) Stop work under the agreement on the date and to the extent specified in the notice of termination;
      ii) Place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the work under the agreement as is not terminated;
      iii) Terminate all orders and subcontracts to the extent that they relate to performance of work terminated by the notice of termination;
      iv) Assign to the CITY in the manner, at the times, and to the extend directed by THE DESIGNEE, all of the rights, title, and interest of the CONTRACTOR under the orders and subcontracts so terminated, in which case the CITY shall have the right, at its discretion, to settle or pay any and all claims arising out of the termination of such orders or subcontracts;
      v) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the DESIGNEE, to the extent the DESIGNEE may require, which approval or ratification shall be final for all purposes;
      vi) Use its best efforts to sell in the manner, at the times, to the extent, and at the prices directed or authorized by the DSATS Director, any property described in Section vi of this paragraph, provided, however, that the CONTRACTOR shall not be required to extend credit to any buyer and further provided that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the CITY to the CONTRACTOR pursuant to this agreement.
      vii) Complete performance of such part of the work as shall not have been terminated by the notice of termination;
      viii) Take such action as may be necessary, or as the DESIGNEE may direct, for the protection and preservation of the property related to the agreement which is in the possession of the CONTRACTOR and in which the CITY has or may acquire an interest.
8) Return all equipment and software belonging to the CITY in the manner, at the times and to the extent directed by the DESIGNEE and to return equipment in good working and mechanical condition, reasonable wear and tear excepted.
22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

49 CFR Part 29
Executive Order 12549

Background and Applicability


The provisions of Part 29 apply to all grantee Contracts/Agreements and subcontracts at any level expected to equal or exceed $25,000 as well as any contract/agreement or subcontract (at any level) for federally required auditing services. 49 CFR 29. 220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from $100,000 to $25,000. These are Contracts/Agreements and subcontracts referred to in the regulation as “covered transactions.”

Grantees, CONTRACTORs, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the agreement or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, CONTRACTORs, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Clause

Suspension and Debarment

This agreement is a covered transaction for purposes of 49 CFR Part 29. As such, the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The CONTRACTOR is required to comply with 49 CFR 29, Subpart C and shall include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

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

The certification in this clause is a material representation of fact relied upon by the CITY. If it is later determined that the CONTRACTOR or proposer knowingly rendered an erroneous certification, in addition to remedies available to the CITY, the FEDERAL Government may pursue available remedies, including but not limited to suspension and/or debarment. The CONTRACTOR or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract or agreement that may arise from this offer. The CONTRACTOR or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.
23. PRIVACY ACT

5 U.S.C. 552

Applicability to Contracts/Agreements

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all Contracts/Agreements.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under $3,000. These requirements do not apply to micro-purchases.

Flow Down

The FEDERAL Privacy Act requirements flow down to each third party CONTRACTOR and their Contracts/Agreements at every tier.

Clause

Contracts/Agreements Involving FEDERAL Privacy Act Requirements - The following requirements apply to the CONTRACTOR and its employees that administer any system of records on behalf of the FEDERAL Government under any contract/agreement:

1) The CONTRACTOR agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the CONTRACTOR agrees to obtain the express consent of the FEDERAL Government before the CONTRACTOR or its employees operate a system of records on behalf of the FEDERAL Government. The CONTRACTOR understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying agreement.

2) The CONTRACTOR also agrees to include these requirements in each subcontract to administer any system of records on behalf of the FEDERAL Government financed in whole or in part with FEDERAL assistance provided by FTA.
24. CIVIL RIGHTS REQUIREMENTS

29 CFR Part 1630, 41 CFR Parts 60 et seq.

Applicability to Contracts/Agreements

The Civil Rights Requirements apply to all Contracts/Agreements.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under $3,000. These requirements do not apply to micro-purchases.

Flow Down

The Civil Rights requirements flow down to all third party CONTRACTORs and their Contracts/Agreements at every tier.

Clause

Civil Rights - The following requirements apply to the underlying agreement:

1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and FEDERAL transit law at 49 U.S.C. § 5332, the CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the CONTRACTOR agrees to comply with applicable FEDERAL implementing regulations and other implementing requirements FTA may issue.

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

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

5332, the CONTRACTOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

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

3) The CONTRACTOR also agrees to include these requirements in each subcontract financed in whole or in part with FEDERAL assistance provided by FTA, modified only if necessary to identify the affected parties.
25. BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18
FTA Circular 4220.1F

Applicability to Contracts/Agreements

All Contracts/Agreements in excess of $100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where CONTRACTORs violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages, or other appropriate measures.

Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

Clauses

Disputes - Disputes arising in the performance of this agreement which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of CITY's engineering division. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the CONTRACTOR mails or otherwise furnishes a written appeal to the CITY Engineer. In connection with any such appeal, the CONTRACTOR shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the CITY Engineer shall be binding upon the CONTRACTOR and the CONTRACTOR shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the CITY, CONTRACTOR shall continue performance under this agreement while matters in dispute are being resolved.

Claims for Damages - Should either party to the agreement suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between the CITY and the CONTRACTOR arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the CITY is located.

Rights and Remedies - The duties and obligations imposed by the agreement documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the CITY, (Architect) or CONTRACTOR shall constitute a waiver of any right or duty afforded any of them under the agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.
27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

49 U.S.C. § 5310, § 5311, and § 5333
29 CFR Part 215

Applicability to Contracts/Agreements

The Transit Employee Protective Provisions apply to each contract/agreement for transit operations performed by employees of a CONTRACTOR recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under $3,000. These requirements do not apply to micro-purchases.

Flow Down

These provisions are applicable to all Contracts/Agreements and subcontracts at every tier.

Clause

Transit Employee Protective Provisions.

1) The CONTRACTOR agrees to comply with applicable transit employee protective requirements as follows:

a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the CONTRACTOR agrees to carry out the transit operations work on the underlying agreement 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 agreement and to meet the employee protective requirements of 49 U.S.C. § 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 the FTA Recipient’s project from which FEDERAL assistance is provided to support work on the underlying agreement. 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 (1), however, do not apply to any contract/agreement 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 (b) and (c) of this clause.

b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the agreement 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 subrecipient for which work is performed on the underlying agreement, the CONTRACTOR agrees to carry out the Project 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 Grant Agreement or Cooperative Agreement with the state. The CONTRACTOR agrees to perform transit operations in connection with the underlying agreement in compliance with the conditions stated in that U.S. DOL letter.

c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-urbanized Areas - If the agreement 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 Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

d) The CONTRACTOR also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with FEDERAL assistance provided by FTA.
28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

Background and Applicability

The newest version on the USDOT’s Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and agreement goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific agreement goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below shall be included in all Contracts/Agreements above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (see section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

Clause

Disadvantaged Business Enterprises

1) This agreement is subject to the requirements of Title 49, Code of FEDERAL Regulations, Part 26, and Participation by DBEs in USDOT Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The CITY’s overall goal for DBE participation is 1.46%. A separate agreement goal [has not] been established for this procurement.

2) This agreement’s DBE Goal shall be tied to the current DBE Goal identified by the CITY and approved by the FTA. Should that Goal change during the agreement’s period of performance, the CONTRACTOR’s DBE Goal shall change to conform to the CITYs approved goal with the FTA.

3) The CONTRACTOR 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 CFR Part 26 in the award and administration of this DOT-assisted agreement. Failure by the CONTRACTOR to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the CITY deems appropriate. Each subcontract the CONTRACTOR signs with a subcontractor shall include the assurance in this paragraph (see 49 CFR 26.13(b)).

4) The CONTRACTOR is required to pay its subcontractors performing work related to this agreement for satisfactory performance of that work no later than 30 days after the CONTRACTOR’s receipt of payment for that work from the CITY.

5) The CONTRACTOR shall promptly notify the CITY, whenever a DBE subcontractor performing work related to this agreement is terminated or fails to complete its work, and shall make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The CONTRACTOR may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the CITY.

6) In order to comply with DBE regulations CONTRACTOR shall report the following information to the CITY in a timely manner identified by the CITY:
a) Identification of all DBE Subcontractors and contact information;

b) *Provide* copies of any relevant Contracts/Agreements or agreements with DBE Subcontractor firms;

c) Provide estimated annual payments to DBE Subcontractors; and

d) Submit all DBE Subcontractor Invoices and proof of payment by CONTRACTOR.
30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1F

Applicability to Contracts/Agreements
The incorporation of FTA terms applies to all Contracts/Agreements.

Applicability to Micro-Purchases
Micro-purchases are defined as those purchases under $3,000. These requirements do not apply to micro-purchases.

Flow Down
The incorporation of FTA terms has unlimited flow down.

Clause
Incorporation of FTA Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding agreement provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any the CITY requests which would cause the CITY to be in violation of the FTA terms and conditions.
31. DRUG AND ALCOHOL TESTING

49 U.S.C. §5331
49 CFR Parts 653 and 654

Applicability to Contracts/Agreements

The Drug and Alcohol testing provisions apply to Operational Service Contracts/Agreements.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under $3,000. These requirements do not apply to micro-purchases.

Flow Down Requirements

Anyone who performs a safety-sensitive function for the recipient or subrecipient is required to comply with 49 CFR 653 and 654, with certain exceptions for Contracts/Agreements involving maintenance services. Maintenance CONTRACTORS for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance subcontractors.

Clause

The CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the USDOT or its operating administrations, the State Oversight Agency of Illinois, or the CITY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The CONTRACTOR agrees further to certify annually its compliance with Parts 653 and 654 before July 1 or a date mutually agreed upon by both the CITY and CONTRACTOR, and to submit the Management Information System (MIS) reports before January 1 or a date mutually agreed upon by both the CITY and CONTRACTOR to the CITY transportation staff. To certify compliance the CONTRACTOR shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for FTA Grants and Cooperative Agreements," which is published annually in the FEDERAL Register.